

**OBJECTION TO PLAINTIFF / INTERVENOR
TOSHIBA AMERICA MEDICAL SYSTEMS, INC.'S
DEPOSITION DESIGNATIONS**

Statement of Objection:

Defendants Desoto Diagnostic Imaging, LLC., Randon J. Carvel, Lynn T. Carvel, Delta Radiology, P.C., and Zobar Properties, LLC. (Defendants) object¹ to the admission or use, regardless of purpose, of the following excerpts² from the respective depositions proposed for designation by Toshiba America Medical Systems, Inc. (TAMS). Defendants do not object to any sections that Defendants themselves designated or counter designated.

The bases for objection are twofold. Defendants stand upon and renew their previous objections stated in the following depositions. Defendants also object to the designations on the additional bases stated in the right column.

Defendants incorporate into this Statement of Objection, all objections heretofore or contemporaneously made including, but not limited to, those included or covered by Defendants' Motions in Limine.

Defendants object to the video deposition of Paul King since the third day of the deposition of Paul King was videotaped. At that time Defendants objected based upon the court's ruling in Pam Paulk's deposition that "[I]f the first of the deposition was already done focusing on the witness, that's the way the second part's going to be done, and that's my ruling." (Deposition of Pam Paulk, Feb. 3, 2004 at 177 lines 8 – 16 and 179 lines 12 – 16).

¹ Not limiting our right to object at a later time.

² Referring to those excerpts we identify with objections.

*Objected Upon Deposition Designations Proposed by TAMS:*1. DEPOSITION OF PAUL KING, VOLUME I (Nov. 17, 2003).

Page	Line	Deposition Designation Testimony (Objections Renewed)	Objection.
6 to 8	24 1	<p>Q. Okay. Could you provide your work history for the last ten years?</p> <p>A. Could I provide it?</p> <p>Q. Yes.</p> <p>A. '93, I started in at Magnolia Regional Health Center, Corinth, Mississippi. Director of Radiology Services there. Stayed till August of '97. August of '97, I went to Delta Medical Center in Memphis, Tennessee as their director of ancillary services. Some time in '99, I was approached by two entrepreneurs to start an imaging center. Started that process. In the meantime, quit Delta Medical and went to work for Baptist Memorial Hospital East as an MR tech. Subsequently got in a little trouble because I worked for the entrepreneurs. Baptist didn't like that aspect of it. So I quit and went back to Delta Medical Center. Worked there until November of -- or actually October of 2000.</p> <p>November -- in October, I had a heart attack, and I was out about four weeks.</p> <p>Q. In November of 2000?</p> <p>A. October 31st of 2000.</p> <p>Q. Okay.</p> <p>A. December -- somewhere in December, started working for Desoto Diagnostic Imaging. I worked there until they changed the name, and I subsequently left. Went back to Magnolia Regional Health Center where I've been since June of 2002.</p>	
16 to 16	1 16	<p>Q. So you moved from Delta Medical Center over to Desoto Diagnostic Imaging?</p> <p>A. No.</p> <p>Q. Okay.</p> <p>A. During that time frame, I moved --</p> <p>Q. We're talking about 1997 or so?</p> <p>A. No. 1997, I was at Delta.</p> <p>Q. Okay.</p> <p>A. In '99 or early 2000, my time was being consumed by the involvement with these two entrepreneurs to build an imaging center. And it was total involvement on all of our parts to build this facility and build this company.</p>	

		<p>Q. Would that be Dr. Carvel and Randon Carvel?</p> <p>A. That would be Dr. Carvel and Randon Carvel.</p> <p>Yes.</p>	
18 to 14	4 to 14	<p>Q. Were you a registered MRI technologist?</p> <p>A. I am.</p> <p>Q. How many years of experience do you have as an MRI technologist?</p> <p>A. Sixteen years.</p> <p>Q. Are you registered in any other modality?</p> <p>A. I'm a registered radiographer as well.</p> <p>Q. Is that it?</p> <p>A. Uh-huh (affirmative response).</p> <p>Q. Is that yes?</p> <p>A. Yes.</p>	
28 to 29	12 to 23	<p>Q. And what occurred in October of 2000, why you left Delta?</p> <p>A. I had a heart attack.</p> <p>Q. Okay. Did they fire you?</p> <p>A. No.</p> <p>Q. How did it come about that you left Delta?</p> <p>A. I left in -- with my heart attack, I was out for four whole weeks. We were supposed to start operation some time in early November.</p> <p>Q. And you say we. Who is --</p> <p>A. The Carvels.</p> <p>Q. Okay. So how did that come about you leaving Delta? Did you decide to go over there and get ready with the Carvels? Is that what happened?</p> <p>A. Yes.</p> <p>Q. Now, did you receive any pay during the four weeks in which you were off for your heart attack?</p> <p>A. I received two weeks of pay from Delta and two weeks of pay from the Carvels. But during the time of my heart attack, I also worked for the Carvels during that four weeks.</p> <p>Q. What were you doing for them?</p> <p>A. Calling employees, answering questions for them, where our process was.</p> <p>Q. Helping them set up operations?</p> <p>A. Trying to let them understand what I had.</p> <p>Q. What do you mean as far as what you had, your knowledge?</p> <p>A. We were all responsible for a piece of the operation.</p> <p>Q. Okay. And what piece were you responsible for?</p>	

		<p>A. TechnologistS, equipment.</p> <p>Q. Anything else?</p> <p>A. Huh-uh (negative response).</p> <p>Q. No?</p> <p>A. No.</p>	
46 to 53	22 19	<p>Q. Okay. And then when you went full time with the Carvels, what was your pay scale?</p> <p>A. Money life scale was 67,000 a year.</p> <p>Q. Okay. How much of an increase was that from your employment at Delta? I believe you testified earlier you were making 52,000 at Delta?</p> <p>A. I started at 52,000. I was making 56 when I left.</p> <p>Q. Okay. So you got 11,00 --</p> <p>A. So it was an 11,000-dollar increase.</p> <p>Q. Okay. And what were your job duties at Desoto Diagnostic Imaging working for the Carvels?</p> <p>A. I was their administrator, their PACS administrator, human resources director, staff coordinator, MRI technologist, general building superintendent.</p> <p>Q. What else?</p> <p>A. And a board member.</p> <p>Q. Is it fair to say you ran the operations of DDI?</p> <p>A. With limitations that Lynn provided, yes, I did.</p> <p>Q. What limitations would those have been? Do you recall?</p> <p>A. She was the ultimate control.</p> <p>Q. What does that mean?</p> <p>A. It meant that if she didn't like the direction of things, that she'd change that direction.</p> <p>Q. So if you had the company going in a certain direction, Dr. Carvel had the ability to change that direction?</p> <p>A. Absolutely.</p> <p>Q. But day-to-day operations, would you be in charge of the day-to-day operations?</p> <p>A. Yes.</p> <p>Q. Okay. And would those day-to-day operations include -- what would those things include? Describe for me.</p> <p>A. Ordering supplies, making sure the staffing matrix was appropriate.</p> <p>Q. What does that mean?</p>	

A. Staffing matrix means that according to procedural load versus employing on site.

Q. What else?

A. Transportation.

Q. Anything else that you can think of?

A. Running the RIS and -- RIS, which is the radiology information system, and also the PACS, which is the picture archive communications system. I was responsible for all the archive of data, push and all of the information to different resources.

Q. Did you interview job applicants?

A. Yes, I did.

Q. Did you make hiring decisions?

A. With the approval of Lynn, yes, I did.

Q. But as far as interviewing the potential employee, would you conduct the interview and then take that information to Dr. Carvel? Is that how it worked?

A. I would take that interview -- interview and interviewee to Dr. Carvel, and she'd interview them after that.

Q. And would you make a recommendation for hire --

A. I would.

Q. -- to Dr. Carvel? You would?

A. I would.

Q. Okay. And Dr. Carvel would generally follow your lead --

A. She did.

Q. -- of those recommendations? She did?

A. Yes.

Q. Now, I believe you mentioned earlier that you were in charge initially in the workup of getting the DDI facility ready, you were in charge of the technologists?

A. That's correct.

Q. Does that mean locating technologists for hire?

A. That's correct.

Q. And did you do that?

A. I did.

Q. And who did you hire right off the bat?

A. The number one goal or the prerequisite that I involved myself in was making sure that each modality had a registered technologist for that modality in it.

Q. Is a registered technologist something different than just a regular technologist?

A. A registered technologist in the modality of operation. So if it was nuclear medicine, he would be registered in that field, nuclear field. If it was mammography, she would be registered in the mammography field, and all the way through the facility with all of the resources.

Q. So a registered technologist in a particular modality would have a heightened education or capabilities?

A. They'd have advanced credentials and be trained in that modality.

Q. Okay. And how do they gain those advanced credentials?

A. Some go to school for it. There's different courses offered. On-the-job training for some, and then they get to challenge the registry. And if they challenge and pass, they become registered. It doesn't mean they're qualified to do it. The qualifications come with the experience on the job.

Q. Did you interview the potential technologist applicants regarding their experience for the job?

A. I did.

Q. Okay.

A. Yes, I did.

Q. And the technologists that you hired at the time, were you satisfied that they were adequately trained?

A. I was 100 percent satisfied.

Q. And what were the names of the technologists that you initially hired for DDI?

A. Rick Staubach, nuclear medicine.

Q. Okay.

A. Cindy Holmes, mammography.

Q. Okay.

A. May Vokaty, ultrasonography, Joanne Tucker, radiography. And there's one more, and I can't remember her name. Debbie Powers, CAT scan. And then I, with my credentials, covered the MRI.

Q. Was Joanne Tucker also hired as an MRI technologist?

A. Joanne was -- I was training Joanne at a facility prior to. So she had MRI knowledge. She was not registered in that field. Therefore, she was registered in radiography and put in that camp at a lower pay.

Q. Okay. But she could do MRI scans at the time?

		<p>A. Yes, she could.</p> <p>Q. And you say you were working with her at a different facility. Where was that?</p> <p>A. That was Delta Medical Center.</p> <p>Q. And she did MRI scanning at Delta Medical?</p> <p>A. Yes, she did.</p> <p>Q. How long did she do MRI scanning at Delta Medical Center?</p> <p>A. A year.</p> <p>Q. And what piece of machinery did Joanne work on at the time?</p> <p>A. GE Contour .5.</p> <p>Q. Did Joanne Tucker also work on the mobile MRI for the Carvels?</p> <p>A. She did.</p> <p>Q. She did? And is that for a three or four-month period, just like yourself?</p> <p>A. I can't remember the actual time frame. It was -- it was probably at least two of those months. The training aspect was greater than a normal person can take. And a good MRI tech, even with a good one, it'll take three or four weeks to train you adequately on a piece of equipment.</p> <p>Q. Okay. But you worked with her closely to try to get her up to speed?</p> <p>A. Yes.</p> <p>Q. Do you feel like she was up to speed pretty quickly?</p> <p>A. No.</p> <p>Q. No? And how did you have that opinion?</p> <p>A. You have a piece of self-confidence about yourself. She never exhibited the self-confidence to be by herself.</p> <p>Q. Are you saying at that time with the mobile MRI, or are you saying throughout her employment with DDI?</p> <p>A. I think throughout the employment all the way up to the very end, which at that point, once I left, she became a lot more self-confident and is running a system and teaching that system today.</p>	
61 to 62	16 11	<p>. Isn't it true that that magnet wasn't actually installed until December of 2000?</p> <p>A. I was not there when it was installed.</p> <p>Q. How were the Carvels supposed to know anything about installation?</p> <p>A. Because I had gone over it with Lynn</p>	

		<p>extensively.</p> <p>Q. And what was Lynn's knowledge about installation?</p> <p>A. She knew nothing about it.</p> <p>Q. Okay.</p> <p>A. But I also worked with Randon, too, to make sure the RF shielding was appropriate, the magnet installation was appropriate, and please, oh, by the way, take pictures of this installation.</p> <p>Q. And what did Randon at the time know about installation?</p> <p>A. He knew nothing, as well, but he was a construct -- he had had his license in construction and whatever he has to have his license in to manage that. Neither one knew anything. But I was out at the time.</p>	
64	15 to 24	<p>Q. Who replaced Mr. Marks on the local level?</p> <p>A. On a what?</p> <p>Q. On a local level, the Memphis rep.</p> <p>A. Donnie Jenkins and Greg -- I can't remember Greg's last name -- they were the two local FEs for nuc and CT and radiography.</p> <p>Q. Is that Greg Stalcup?</p> <p>A. Stalcup. That's correct. Greg Stalcup. They replaced him for eyes on. Ray Ruskosky, who is out of Birmingham, replaced him for the local.</p>	
65	9 to 22	<p>Q. So there's a period of time there was no local service engineer for the MRI at DDI; is that correct?</p> <p>MR. CHESNEY: Objection. Contradicts what the witness' testimony was just one second ago.</p> <p>A. I said that Greg Stalcup and Donnie Jenkins acted as the local field service engineers for all the modalities. Their specialty was in other arenas, but as far as the MRI goes, locally, there was no absolute FE for local service.</p> <p>Now, I don't know what the definition of local is. Birmingham is about three hours away, and that's fairly local when you look at FE and service response times. Most of the vendors I deal with now are two and a half to three hours out from the hospital I'm at today.</p>	Use of the excerpt is Misleading. FRE ³ 106 competence.
67 to 68	17 to 1	<p>Q. Isn't it true that when Toshiba sold the MRI equipment to DDI that they told them they would have qualified and competent service engineers to work on the equipment?</p> <p>MR. CHESNEY: Objection. Leading.</p>	Use of the excerpt is Misleading. FRE 106 competence.

³ (Federal Rules of Evidence, Rule #)

		<p>Objection to the form.</p> <p>A. That was our request to Toshiba, and our understanding was that we would have those individuals. And indeed, they did throw modality specialist FEs at all modalities there, and Randy being one of those.</p>	
79 to 20	9	<p>Q. Okay. And Wendy McDonald, was she the applications for MRI?</p> <p>A. She was.</p> <p>Q. And do you know what her background was?</p> <p>A. She was an MRI technologist registered in that field.</p> <p>Q. Did you feel she was a competent applications person at that time?</p> <p>A. I did a little background check on her. She had actually done the applications turnover at Saint Francis Hospital, who owned Excelarts as well. And they felt very comfortable with her expertise.</p>	Use of the excerpt is Misleading. FRE 106 competence.
82 to 84	7 23	<p style="text-align: right;">82</p> <p>7 Q. Okay. And just briefly, what is the</p> <p>8 responsibilities for applications?</p> <p>9 A. From which side?</p> <p>10 Q. From Toshiba side.</p> <p>11 A. Responsibilities of applications, the first</p> <p>12 initial visit -- and they're broken up in two visits.</p> <p>13 You get initial visit and then advanced visit. The</p> <p>14 first initial visit was general operations of the piece</p> <p>15 of equipment; that is, from starting the machine from</p> <p>16 ground up, powering up, logging in, understanding what</p> <p>17 your log-in phrases may be, understanding what some</p> <p>18 potential error reporting cycle problems may be, general</p> <p>19 operations for the bread and butter things like the</p> <p>20 backs and heads are. She trained for a week or so on</p> <p>21 build protocols into the system and showed how to access</p> <p>22 those protocols and do day-to-day scanning, running</p> <p>23 single to noise QA and things like that.</p> <p>24 Q. And you say Ms. McDonald built the protocols</p> <p>25 and put them in the system?</p> <p style="text-align: right;">83</p> <p>1 A. Toshiba comes already formatted with</p> <p>2 protocols. But Ms. McDonald came in and put in some of</p> <p>3 her more specialized protocols into the system. As MR</p> <p>4 people go, you build your own sequences. You know they</p> <p>5 work. And you try to share that across the spectrum.</p> <p>6 And she shared hers from different sites of Excelarts.</p> <p>7 Each piece of equipment manages its own protocol base.</p>	

		<p>8 Q. So the protocols with various systems may be a</p> <p>9 little bit different --</p> <p>10 A. Yes.</p> <p>11 Q. -- system to system?</p> <p>12 A. Yes, they would.</p> <p>13 Q. Was there ever a necessity while you were at</p> <p>14 Desoto Diagnostic Imaging to, say, tweak the protocols?</p> <p>15 A. My fetish is that I tweak every system that</p> <p>16 I'm on regardless if it's there or not. Yes, I tweaked.</p> <p>17 Q. And that's based on your experience?</p> <p>18 A. That's based on my experience.</p> <p>19 Q. And you were capable of doing that tweaking?</p> <p>20 A. I was.</p> <p>21 Q. And did you do it well?</p> <p>22 A. I did it very well.</p> <p>23 Q. And if Mike O'Barr stated that the reason the</p> <p>24 image quality at DDI was poor was because the personnel</p> <p>25 at DDI was improperly tweaking the protocols, would he</p> <p style="text-align: center;">84</p> <p>1 be lying?</p> <p>2 MR. CHESNEY: Objection.</p> <p>3 Mischaracterizes Mr. O'Barr's testimony.</p> <p>4 A. I'd say it's a false statement to some extent.</p> <p>5 If I was there doing it, yes, it would be a misleading</p> <p>6 statement that he made. But if it was one of my other</p> <p>7 technologists -- technologists as they set today -- and</p> <p>8 this is universal. This is just not with DDI or Baptist</p> <p>9 or anyone -- they're button pushers. And unless they're</p> <p>10 trained appropriately -- and the only two companies out</p> <p>11 there that gave a technologist a chance to learn real</p> <p>12 systems was Toshiba and Siemens. They forced you to</p> <p>13 understand what you were doing. They didn't allow you</p> <p>14 to be a button pusher.</p> <p>15 But the technologists I acquired -- certainly,</p> <p>16 Joanne was a button pusher because she learned</p> <p>17 buttonology to get through an exam. And she's back on</p> <p>18 the GE system with her buttonology again. So you know,</p> <p>19 she can train that system. She can do that.</p> <p>20 But Debbie May, when she came on, she had some</p> <p>21 flexibilities. But as a whole, you've got to have a lot</p> <p>22 of devotion to that practice before you understand it.</p> <p>23 I'm done.</p>	
89 to 91	12 17	<p>Q. Okay. Let me show you Exhibit Number 5.</p> <p>(WHEREUPON, THE ABOVE-MENTIONED</p> <p>DOCUMENT WAS MARKED AS EXHIBIT NO. 5</p>	

TO THE DEPOSITION, AND IS HERETO ATTACHED.)

Q. (BY MR. TATE) Do you see on this particular report at the top it has the caller name as Debbie Powers?

A. Yes.

Q. And it references in the case summary the Excelart; is that correct?

A. That's what it -- that's what it's saying in here.

Q. Did Debbie Powers do MRI?

A. She did not.

Q. Can you explain why Debbie Powers would be calling about the MRI, or could that, in fact, maybe have been a mistake?

A. I believe at this time -- all the techs ran into a universal usage mechanism at our facility. They did laundry. They washed the floors if they had to. Anything -- they picked up laundry. They just did a variety of things.

Q. Do you think maybe you had asked her or somebody in MRI had asked her to place the call, possibly?

MR. CHESNEY: Objection. Calls for speculation.

Q. (BY MR. TATE) Do you think it would be a possibility?

A. Well, Debbie had just gotten back from -- we sent her out to California to CT school to train on the Asteion. And I think she probably had just gotten back, and it wasn't a whole lot of business quite for her at that point. So you know, she was -- and I don't know. Maybe someone did ask her to make this call for them.

Q. Okay. What was the problem with this particular case report?

A. Well, it's saying here that patient heart monitor inoperative.

Q. What does that mean?

A. I don't know what that means because this appears to have some deliverance to the CT scanner. But you know, it's to Randy Marks. Looks like he received that part in. The heart monitor itself was just -- maybe it was our cardiac gating system for the Excelart. And I think --

MR. CHESNEY: Excuse me. I'm sorry. Finish your answer.

		<p>A. I think we talked about before that that system was inoperable. And there was no emphasis put on it. There was no need by us at the time. But there was no emphasis put on it to get that system operational. And you know, you don't know until the day you need it. And then if it's not operational, you know it at that point. So I think that's why this order was placed.</p>	
120 to 123	23 18	<p>Q. I'll ask you to take a look at Exhibit 14. (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS MARKED AS EXHIBIT NO. 14 TO THE DEPOSITION, AND IS HERETO ATTACHED.)</p> <p>Q. (BY MR. TATE) Is this a call placed on January 29th, 2001, Mr. King?</p> <p>A. Uh-huh. Yes, it is.</p> <p>Q. Does it have to do with the Excelart?</p> <p>A. Yes.</p> <p>Q. And does it look like a call made by Ms. Tucker?</p> <p>A. Yes.</p> <p>Q. Okay. And do you -- can you tell from looking at this what the problem was?</p> <p>A. It appears that she was having a lot of noise in her image acquisition.</p> <p>Q. Would that be a legitimate call to make if there was noise in the imaging acquisition?</p> <p>A. Not at first, no.</p> <p>Q. Not at first?</p> <p>A. Not at first.</p> <p>Q. But by the time Ms. Tucker made the call, would that be an appropriate call to make?</p> <p>MR. CHESNEY: Objection. Assumes facts not in evidence, calls for speculation, no showing of personal knowledge.</p> <p>A. No, it wouldn't.</p> <p>Q. (BY MR. TATE) So what did Ms. Tucker do wrong?</p> <p>A. When she had the noise occur, she should have went back and put her phantom in, rescanned the phantom, recalibrated the piece of equipment. And at that point if she still had the noise and it existed, then she could have called the FE at that time.</p> <p>A lot of this is tech dependent. This is probably one of the most tech dependent pieces of equipment out there. If you've got noise, it's for a reason. You put somebody in there with silk on, you put somebody in</p>	

		<p>there with a bra strap that has a piece of metal on it, bullet in your pocket, anything, it's very sensitive to that -- to a problem. The doors open, say, for instance, a leak in the RF shielding, for instance. All these problems will exist. And until you identify them, you're spinning your wheels calling the FE in because when he gets there, just like what she states here, unable to duplicate upon arrival, that problem goes away because that patient has gone away.</p> <p>Q. How do you know that Ms. Tucker didn't go through any of the processes before she made this call?</p> <p>A. My assumption is that there's very few that will when you look out there at the technologist pool. And she was so inexperienced with this. Even though she had the proper training from Wendy, the inexperience of Joanne -- she was not the best tech. She was being trained to be the best tech. Her unsurety or -- she freaked out a lot of times. If something happened, she recorded it. She put it down, because to solve a problem was a very difficult task for her at that time. Now, it's made her a better person because I pushed and pushed and pushed her to do the right thing here. Look at the problems, identify why we had those problems, so when you see the lots of noise, if we continue seeing that, and she has done her job, which I don't see it stated here that phantom scanned and then phantom images are brought up.</p> <p>Q. But you don't know she didn't do that; is that right, for certain?</p> <p>A. I would be 99.9 percent certain.</p> <p>Q. But based on this document, you can't tell.</p> <p>A. I would be 99.9 percent certain.</p>	
131 to 133	24 4	<p>Q. (BY MR. TATE) Well, let me rephrase it for you. Were they having the same problems that you were having?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous.</p> <p>A. They didn't really have the -- they had some of the same general problems, but they had no problems with those particular problems. They had already resolved the direction that they needed to go in. So when I asked them pointed questions, oh, yeah, we've seen that. So I had to really dig after them to give me the answers that I was looking for. Are you having these type problems? Oh, yes. We've seen that.</p> <p>Q. Okay. And then how was your conversations</p>	

		<p>with Branda Schones?</p> <p>A. Pretty much the same. Recalling conversations, it would be very difficult to do. But in general, we talked about the resolution of the white dot artifact and how did they resolve that for them. She said they pretty much didn't, but you know, they got over it using double nex. That was the solution. And she didn't understand what white dot artifact was. But when I went into detail explaining it to her, she understood, yeah, we've seen that.</p> <p>Q. Did she call it the ping pong artifact?</p> <p>A. She might have called it a ping pong artifact. That's where you got a difference between good technologists and the better technologist.</p> <p>Q. As far as terminology goes?</p> <p>A. No. As far as identification of an artifactual problem.</p>	
137 to 138	10 11	<p>Q. So it was a Toshiba coil?</p> <p>A. No.</p> <p>MR. CHESNEY: Objection.</p> <p>Q. (BY MR. TATE) No?</p> <p>A. No, it was not.</p> <p>MR. CHESNEY: Mischaracterizes the witness' testimony.</p> <p>Q. (BY MR. TATE) I'm confused.</p> <p>A. Toshiba has what they call a license plate coil. If you bought their configuration, it would only do thoracal lumbar, on lumbar and then thoracic, and then you'd have to take that coil and put another device so you could do the cervical area.</p> <p>So they contract with people like American Scientific -- and GE does this, Siemens does this. Everybody uses this same coil. But the configuration was configured as far as the harness and the hookup for Toshiba to hook into their system and be turned on via their system parameters.</p> <p>Q. Okay. So but the coil was actually sent to the facility by Toshiba; is that correct?</p> <p>A. That's correct.</p> <p>Q. So is it fair to say that Toshiba didn't manufacture the coil but provided and supplied the coil to the customer?</p> <p>A. That is correct.</p> <p>Q. Okay.</p>	
141	14 to	<p>Q. Some of the image quality was such that it was difficult to do an interpretation?</p>	

	25	<p>A. Two percent.</p> <p>Q. What other problems would the image quality cause?</p> <p>A. Well, there's no other problems image quality would cause other than the fact that there may be a missed interpretation. But that would be it. Again, we were receiving good data. It just wasn't that beautiful data that we wanted to put out in that facility.</p> <p>Q. So poor quality image, though, could result in a misrepresentation in a particular situation?</p>	
144 to 145	18 2	<p>A. I forgot the question. Well, I will say this to that statement, there's probably -- out of all the units out there, only 40 percent will produce an adequate image. The other 60 percent produce what we produced because of the poor technologist that's operating the system, no education that's formulated behind those technologists, and them just being, quite frankly, button pushers and no identifiers to it. So that is a quality issue across our environment, MR environment.</p>	
145 to 146	13 6	<p>Q. Did you spend more time in the MRI room trying to produce quality images -- strike that.</p> <p>Did you spend more time in the MRI room more than you would have liked at DDI?</p> <p>A. No, I did not.</p> <p>Q. Did you enjoy spending time in the MRI?</p> <p>A. I enjoyed it. That was my relaxation point.</p> <p>Q. So you scanned a lot of patients yourself or assisted in the scanning?</p> <p>A. I would try to. I'd stay over late. I was there when the first patient got there and left when the last patient left and sometimes afterwards.</p> <p>Q. And you just felt that was your obligation?</p> <p>A. My obligation was Desoto Diagnostic Imaging as a whole. I wear all types of hats, and I fulfilled all my responsibilities to all those hats. So I felt like on my relief side of things, which is the MRI, I should have a little fun every once in a while. So fun was to uncover the problem.</p>	
147	2 to 12	<p>Q. And what percentage of your time do you think you were spending in the MR and/or with MR situations at DDI?</p> <p>A. Kyle, I can't categorize that into percentages because my dedication was 100 percent for the whole facility. And to break it out into percentage points -- you know, I had PACS that I dealt with. I had the human</p>	

		resources side I dealt with. I never let any of those projects go down. So in a 12-hour day, that I did a lot of, 10, 11, 12 hour days, I probably spent three and a half, four hours a day over in the MR suite.	
170 to 173	7 18	<p>Q. Did you ever ask anybody at TAMS or Toshiba why DDI was sold the three nex feature but was not able to use it?</p> <p>MR. CHESNEY: Objection. Assumes facts not in evidence.</p> <p>A. There was no reason to ask that question. All the equipment has -- you can go to do 12 nex on these pieces of equipment. Six nex is way overkill; three nex, I hate using; four, I will use. But I hate using three nex in anything. It's an odd factor.</p> <p>Q. But it was an option that was sold to DDI; is that correct?</p> <p>A. Yes, it was.</p> <p>Q. And that was an option that actually was not being able to be used; is that correct?</p> <p>MR. CHESNEY: Objection. That assumes facts not in evidence and mischaracterizes the witness' previous testimony.</p> <p>A. That's incorrect because three nex was very much used. If you wanted to enhance IECs or to look at pituitary stalks and things like that, you used the three nex value. It's usually in that surface coil arena that you didn't want to use an odd nex value. And at that point, you'd get that white dot artifact that would occur.</p> <p>Q. (BY MR. TATE) Okay.</p> <p>A. But if you knew about it on the front end, you planned for it. Just like John is saying here, they didn't care, they just planned for it.</p> <p>Q. So you'd use the three nex feature to try to eliminate the white dot artifact.</p> <p>A. No.</p> <p>Q. Okay. So explain that.</p> <p>A. I'd use the three nex to enhance the image quality because looking at smaller parts with little pituitary glands or the fifth and sixth cranial nerves as they came out, something that's real fine and definitive, you'd actually bump those next values up. And again, if you go more than six, it's really overkill, and five is overkill. So really, four is your value, four and anything below four.</p> <p>Q. But it is true, as you testified earlier, that</p>	

		<p>Toshiba told you not to use the three nex; correct?</p> <p>MR. CHESNEY: Objection.</p> <p>Mischaracterizes --</p> <p>Q. (BY MR. TATE) On spines?</p> <p>A. No. I said not to use odd next.</p> <p>Q. Would that be a number three? Is number three an odd number?</p> <p>A. I guess it would be.</p> <p>Q. Did they tell you not to use odd nex on spines to eliminate --</p> <p>A. They did not say not to use the nex, odd nex. If the white dot interfered with our information we're trying to gather, then we -- they suggested that we go to an even nex value. So it was never suggested that we don't use it. But if it interfered, then don't use it.</p> <p>Q. Okay. Is it fair to say that Toshiba suggested not to use the odd nex on spine exams to eliminate the white dot artifact?</p> <p>MR. CHESNEY: Objection.</p> <p>Mischaracterizes the witness' previous testimony.</p> <p>A. It never --</p> <p>MR. CHESNEY: Don't flap your hand at me.</p> <p>MR. TATE: I didn't flap my hand at you.</p> <p>MR. CHESNEY: Yes, you did.</p> <p>MR. TATE: No, I did not.</p> <p>MR. CHESNEY: I sat here watching you. You're telling an untruth on the record again. More to the point, don't flap your hand.</p> <p>MR. TATE: I'm not flapping my hand at you.</p> <p>MR. CHESNEY: I'm simply making an objection to your question. No reason to flap your hand.</p> <p>MR. TATE: I'm not flapping my hand at you, John. I'm not even paying attention to you.</p> <p>MR. CHESNEY: You're not doing -- you're not flapping your hand anymore. You're doing very well. Keep it up.</p> <p>A. The odd nex -- Toshiba never informed us not to use odd nex. The odd nex was one of those -- not using it was one of the fixes if we didn't want to see that problem exist. And indeed, once we went to a shorter coil sequence, we got rid of that white dot artifact, and that was truly a short board elliptical artifact that was pulling itself into the field.</p>	
185	1	Q. Is it common practice in the medical industry	

	to 17	<p>that technologists would be having to do manual scans with an MRI?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous, overbroad, lack of showing of personal knowledge to answer that question as phrased.</p> <p>Q. (BY MR. TATE) Based on your experience.</p> <p>MR. CHESNEY: Same objection.</p> <p>A. My experience is that manual scans should be something that's taught from the get go for all technologists. When you're dependent on the computer to do your autoscanning for you or autotuning for you, then you become that button pusher once again. But a manual scan from the '96s back were very predominant focus for MR technology. From '97 forward, it became an autotune, hey look, you can just push this button, and it will tune itself. So is that the answer?</p>	
202 to 203	4 1	<p>Q. (BY MR. TATE) Okay. Fair enough. Did Jesse Jacobs ever concede that you were right that the phantom was not moving?</p> <p>MR. CHESNEY: Objection.</p> <p>Mischaracterizes the witness' previous testimony. He never suggested that Mr. Jacobs said the phantom was moving.</p> <p>A. He never -- I mean, I think he conceded to the point. I think there's a paragraph down here that he makes a statement. However, the intermittent ghosting started rearing its little head on Thursday evening and Friday morning. Back up in another sentence up there, he also says that especially with the FSC of 17 echo and 100 AT with flow cup, except on one case that had ghosting, and that was corrected after repeat scanning.</p> <p>And that's, indeed, what we had to do. We had to go back and repeat, change a few factors, you repeat it, change our phasing coding a little bit. He does say the head muscular skeletal work was very nice. And it was. They bought us another coil and a QDC spine and a QD spine coil. So they got away from that American Scientific coil, which cleaned up some of that white dot artifact. That was a fix, and it was a good fix.</p>	
206 to 207	7 11	<p>Q. And who was responsible for the Arctic Chill problems, the valve in backwards?</p> <p>A. The Arctic Chill Company.</p> <p>Q. Okay. But did Toshiba hire that Arctic Chill Company?</p> <p>A. They hired that company. That's the company they worked with. Now, I don't know if that's an H & H</p>	

		<p>problem. That might be actually a builder problem there. Bu indeed if it is, you know -- but I know Toshiba contracted with Arctic Chill to supply -- to integrate with their scanners.</p> <p>Q. So Toshiba bought the arctic chill?</p> <p>MR. CHESNEY: Objection.</p> <p>A. I don't know who bought the arctic chill. I just know --</p> <p>MR. CHESNEY: Sorry. My objection is it mischaracterizes the witness' testimony and assumes facts not in evidence.</p> <p>A. The arctic chill was one of those products that's used by Toshiba pretty exclusively.</p> <p>Q. (BY MR. TATE) Okay. And as far as the checkout of proper city water bypass system, who would be the responsible party for that?</p> <p>MR. CHESNEY: Objection. Lack of showing of personal knowledge.</p> <p>A. I don't know who would be responsible for that. I would think the foreman on the job for the builder would have been responsible for the city water bypass stuff because he's responsible for bringing that stuff to the house.</p>	
215 to 216	17 14	<p>Q. (BY MR. TATE) Okay. Looking at the failures on this -- regarding the CT scanner, I believe it mentions reconstruction of images very slow. What does that mean?</p> <p>A. It means that we didn't have enough RAM and not enough gig in the system to reconstruct. The acquisition was done in a timely frame, but once the raw data was there, the reconstruction took probably three to four minutes more.</p> <p>Q. Was it your belief on the front end, based on Toshiba's representations, that the reconstructions would occur faster than that?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous. Assumes facts not in evidence.</p> <p>A. When I looked at this scanner, at the time we didn't have faster scanners than this. This was an average scanner out on the market, and it could -- it reconstructed at an average rate. You know, it was not a big problem for us, but it was a problem because we thought that it should be reconstructing a little faster than what it's doing. But when you compared it across the market at the same similar scanners, the reconstruction rates were similar.</p>	Use of the excerpt is Misleading. FRE 106 competence.

219 to 221	6 8	<p>Q. (BY MR. TATE) Okay. Fair enough. Let's look at the next page of the exhibit regarding the nuclear medicine modality. And if you could just take a look at this particular page and tell me if you would agree that it's a fair and accurate representation of your opinion and belief at the time that you wrote this, that would be good enough.</p> <p>MR. CHESNEY: Objection. Vague and ambiguous and overbroad.</p> <p>(BRIEF PAUSE)</p> <p>Q. (BY MR. TATE) Have you read through this?</p> <p>A. Yes.</p> <p>Q. At the time you wrote this, would you say that's a fair and accurate representation of what you believed at the time?</p> <p>MR. CHESNEY: Same objection.</p> <p>A. The promises were. You know, when you say reduce time to do cardiac, they told us this particular camera, when we went to Pensacola, would scan at about 18 to 20 minutes of cardiac because it was a dual head scanner. It's wasn't a variable angle. We couldn't afford a variable. The adequate support personnel, we got phone support. We didn't have the -- we didn't have that support we thought we should have.</p> <p>I had a registered tech in there at one point. He seemed to function adequately on this system. But I'm ignorant when it comes to nuclear medicine and profess to be very ignorant. Don't want to know anything about it, don't care to know anything it. Although I've been plagued with it in all the modalities -- all the companies I've worked with.</p> <p>The ability to do all the common protocols, that was a promise, as well, and that didn't come through because we lacked a couple of collimators to do those galliums or those bones. We were able to do the bones; we weren't able to do the galliums. And that limited us somewhat because our cardiac business wasn't as strong as we thought it was going to be originally. And we had no worklist management on it as well.</p> <p>We did have 33 service calls. I don't know if that's an appropriate statement. I believe some of it was tech related. Because again, when you throw a technologist that's not fluent in nuclear medicine into an environment like that, it's like throwing them into MR. They don't know that you're not supposed to have a bullet in your pocket, pocket knife in your pocket,</p>	Use of the excerpt is Misleading. FRE 106 competence.
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		<p>things like that. And they allow that to go through. So some of this -- again, when the technologist was present who was registered in that field and had the education that it took, he sat and monitored the process. And I think that he didn't have any failures. At least, he didn't report any failures to us at the time frame he was there.</p>	
222 to 226	12 to 18	<p>Q. Would that be a legitimate call, though, that he made?</p> <p>A. My techs were instructed any kind of failure of the equipment, they need to call about it immediately, whether it's just a general button that's fallen off or whatever the case was. Our intent was to maintain this as a show site and a Taj Majal.</p>	FRE 106 competence.
225 to 226	24 to 31	<p>Q. (BY MR. TATE) Did Toshiba represent on the front end that you could do sectional imaging that you referred to?</p> <p>A. They did --</p> <p>MR. CHESNEY: Objection. Excuse me. Vague and ambiguous.</p> <p>A. They did in the TOMO. TOMOs as they stand today, there's a few that are attached directly, integrated through the table and the overhead tube and crane. But this particular one was one that you had to hook up to the table side and then hook a fulcrum to that. And it's very labor intensive. We could use it. It was usable.</p>	FRE 106 competence.
227 to 228	24 to 31	<p>Q. Okay. And I'm confused. What did Toshiba expect DDI to pay for with respect to the damage that the Toshiba applications person caused?</p> <p>MR. CHESNEY: Object --</p> <p>A. I don't believe they --</p> <p>MR. CHESNEY: Excuse me. Objection. Mischar --</p> <p>A. They didn't --</p> <p>MR. CHESNEY: I'm sorry.</p> <p>THE WITNESS: No that's all right.</p> <p>MR. CHESNEY: Excuse me.</p> <p>Mischaracterizes the witness' testimony. He didn't say that Toshiba said anybody had to pay for anything. That's a complete misrepresentation.</p> <p>A. No. Toshiba didn't say that DDI would pay for that. They would replace that. They would replace the mechanism, but they wouldn't replace the actual TOMO device itself. That was a package we had bought with the system. We only -- I think in all fairness, we</p>	

		probably only saw one of these tables in the operation, and it was from a distance. It was actually not in operation when we saw it. We never physically put our hands on it.	
232 to 233	1 8	<p>Q. Okay. Now, on the last page of Exhibit 246, would these be additional failures regarding the R&F room?</p> <p>A. Well, we had 34 service calls that we placed. And again, we documented each little incident as a service call from inception. That was 12/18. You see we opened the doors on the 18th. And of course, my instructions to the technologists at that point is to be -- to chronical this and be a good historian, and some did, and some didn't. Whether they were big problems or little problems, they were problems.</p> <p>Q. Okay. And the fluoro images are either too bright, white? What does that say?</p> <p>A. Yeah. They're too bright white or too dark with exposure. That was -- that was, indeed, a calibration on the fluoro tube itself. Plumicon and -- from what I understand, the plumicon actually accepts image to light from the radio receptors and at that point puts it up on screen for viewing and for printing. And the plumicon needed adjusting, and actually, I guess they did do the adjustment.</p> <p>We had this occur two or three times. You'll see this especially when what they call the bright light signal comes in, that patient moves off of the center of that cell, and then the intensifier hits a bright spot. And it kind of bleeds itself over and sort of like looking into a light and seeing that stuff after the fact. Because you can't focus very well.</p> <p>Q. Okay.</p> <p>A. That really is not a -- that's not a great big problem. All equipment does it. All fluoro equipment does it to some extent when you lose the center focus on that.</p>	
236 to 21	1 21	<p>Q. Do you recall the specific nature of this particular exam that had taken place, what was involved?</p> <p>A. If I'm not mistaken, this was a pediatric case. Very difficult to put a catheter in. Catheter was a very small cryo. And of course, the MPs that we do, it would be difficult. And that's why you see that the amount of MBA mass was so minimal as it stood there.</p> <p>Q. Was it an uncomfortable situation for the child?</p>	

		<p>A. Very uncomfortable situation for the child. To repeat this exam, it would have been unnecessary, in my opinion. I think we probably did have to repeat it or didn't get an image out of it at that time. So we got an AP image. You could probably what she needed to see. But the urethra is best viewed on the lateral side of that, and that's the picture that plumed on her.</p> <p>This is not a daily occurrence common event, but it is a common event that occurs with R&F equipment. I mean, it just -- not necessarily that that -- theirs was bad. It's just that it just happened at that particular event.</p>	
237 to 238	9 16	<p>Q. Okay. Could you describe the other R&F problems that you encountered when you were at DDI?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous, overbroad.</p> <p>A. We had a couple of wall buckies go out on us. And again, that's not uncommon for this kind of thing to occur. It's just that it was an inconvenience because that's the only room we had at the time. And you'll see that event occurring. I mean, I have it on a daily basis where I am. So it's not an uncommon occurrence, but we did have two go out on us and the receptors in those two. I think we actually had one receptor in our table bucky as well go out, and he had to replace that.</p> <p>So we had some mechanical situations that occurred, none that are not as common as they are as the sun comes up during the day. I mean, they're very common throughout the radiology world. Again, it's a brand new piece of equipment. And you expect some failures, but you expect immediate repair for those failures.</p> <p>Q. Was the immediate repair occurring with the failures?</p> <p>A. For the most part, they were. The buckies were replaced in a fairly timely frame. I think the wall bucky was the one that -- which stretches out a little longer than we'd like for it to have. The battery problem being one of those things nobody had an answer for. That became an inconvenience. Because if Joanne hadn't have been so fluent on that piece of equipment, people like myself or Brian or anyone else couldn't have brought that system back up. They would struggle bringing it up because, again, you adopt a piece of equipment in that facility, and you own it, and you know how to baby it to bring it along.</p>	
241	5	Q. Okay. Is it fair to say that there were	

to 243	6	<p>multiple ongoing problems with the R&F room since it was installed at DDI to when it was removed from DDI?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous, also duplicative.</p> <p>A. With my knowledge of this type of system and x-ray in general, over this time frame, there was not an excessive amount of problems. There were some problems associated with it but not an excessive amount. You are expected to have this kind of problem throughout.</p> <p>Q. (BY MR. TATE) Did they ever fix -- did Toshiba ever fix the problems with the R&F suite?</p> <p>MR. CHESNEY: Objection. Vague and ambiguous, overbroad.</p> <p>A. Depends on what you mean by fix. They put three batteries in the memory, and they did work on the problem to resolve it. And we did have an FE there to control the situation, and he was pretty much accessible all the time. So if we called him, he would run down there and see us. As far as the tomography goes, we just elected not to use that anymore. So it was out of site, out of sound kind of theory.</p> <p>With these TOMO -- I mean, with the collimator and the light problems and the plumbing, they did address that, and they had it where it was functional. Would I buy one of these tables today? I would not. So it was not -- it was not meant to be a heavy throughput piece of equipment. It was meant to be a radiology piece of equipment for low volume, and what's what our intent was.</p> <p>Q. And who was the FE that worked on the x-ray system?</p> <p>A. Greg Stalcup.</p> <p>Q. Did they ever fix -- did Toshiba ever fix the fluoro problem that Dr. Carvel experienced with the pediatric patient?</p> <p>A. It was my --</p> <p>MR. CHESNEY: Objection. Excuse me. I'm sorry. Objection. Vague and ambiguous as to fluoro problem.</p> <p>A. It was my understanding that Greg Stalcup did come in and do the calibrations that were needed to adjust the plumicon or the camera tube to make those necessary travel adjustments when table movement occurred.</p> <p>Q. (BY MR. TATE) So it was your understanding that those repairs were made?</p>	
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		<p>A. Yes.</p> <p>Q. And they were successful repairs?</p> <p>A. I think they had a failure, and then they repaired, and then they were successful. So the first attempt was not a complete repair.</p>	
297 ⁴ to 298	17 18	<p>Q. Okay. I want to start by asking you some 09:24:18 questions about the negotiations and the process that 09:24:20 led up to DeSoto's actual purchase or lease of medical 09:24:24 equipment when you were starting out the facility. 09:24:30 Fair enough? 09:24:31</p> <p>A. Yes. 09:24:32</p> <p>Q. Okay. You had mentioned in your deposition 09:24:32 yesterday that there was -- that there were some oral 09:24:34 RFPs I think is how you described them -- 09:24:38</p> <p>A. That's correct. 09:24:40</p> <p>Q. -- in connection with that process? 09:24:41 Could you tell us a little bit what you 09:24:43 meant by oral RFPs? 09:24:46</p> <p>A. Normally, a written RPF is sent out to a 09:24:48 vendor, a selected vendor. Instead, we contacted 09:24:51 orally three vendors we wanted to deal with. And 09:24:56 those were General Electric, Philips Medical Systems, 09:24:59 and Toshiba of America. 09:25:03</p> <p>Q. Okay. 09:25:06</p> <p>A. And at that time we told them verbally what we 09:25:07 were going to do, what our intentions were, as far as 09:25:12 opening up an imaging center, freestanding, all 09:25:15 digital, paperless, filmless. 09:25:18</p> <p>With that -- that piece of information, 09:25:25 they were to put us together a comprehensive package, 09:25:28 covering R & F, ultrasound, mammography, MRI, and 09:25:31 nuclear medicine, and CT. 09:25:39</p>	
305 to 308	15 to 25	<p>Q. (BY MR. CHESNEY) Carry on, Mr. King. Can you 09:31:17 answer the question? 09:31:18</p> <p>A. At no time was all three vendors in the same 09:31:22 room. There were separate communications with each 09:31:25 vendor. 09:31:27</p> <p>Q. And who communicated with each vendor? 09:31:27</p> <p>A. I did. 09:31:29</p> <p>Q. Okay. Did you, as a result of these 09:31:32 communications, receive any kinds of proposals from 09:31:35 the potential vendors? 09:31:38</p> <p>MR. TATE: Same objection. This goes 09:31:39</p>	

⁴ Plaintiff Intervenor TAMS' Deposition Designations fail to mention that Volume II of the Paul King deposition starts at page 292 and occurs not on November 17, 2003 but on November 18, 2003.

	<p>beyond the scope of direct examination. 09:31:41</p> <p>A. We asked for equipment proposals, first -- 09:31:45 first option, first proposals. 09:31:51</p> <p>Q. Can you tell me what you mean by "first 09:31:58 option, first proposals"? 09:32:00</p> <p>A. We wanted to look at what they had on their 09:32:01 top-of-the-line, first line, and the proposals that 09:32:04 came with that. 09:32:07</p> <p>Q. When you say "top-of-the-line," what do you 09:32:11 mean by "top-of-the-line"? Highest-performing 09:32:13 equipment or something? 09:32:16</p> <p>MR. TATE: Objection. That 09:32:17 mischaracterizes the witness's previous testimony. 09:32:18</p> <p>MR. CHESNEY: Sure. 09:32:20</p> <p>Q. (BY MR. CHESNEY) What do you mean by 09:32:20 "top-of-the-line"? 09:32:21</p> <p>A. The best-performing equipment. 09:32:22</p> <p>Q. "Best-performing" meaning what? 09:32:29</p> <p>A. Best up-time, user-friendly, reproducibility, 09:32:31 service time, support for those pieces of equipment. 09:32:46</p> <p>Q. Okay. Did you receive a proposal from GE? 09:32:54</p> <p>A. We did. 09:32:57</p> <p>MR. TATE: Objection. That goes beyond the 09:32:58 scope of direct. 09:32:59</p> <p>Q. (BY MR. CHESNEY) What did GE propose by way 09:33:00 of MR? 09:33:02</p> <p>MR. TATE: Same objection. 09:33:03</p> <p>A. GE proposed a 1.5 Horizon. 09:33:06</p> <p>Q. That's a 1.5 Tesla MR? 09:33:16</p> <p>A. 1.5 Tesla MR. 09:33:19</p> <p>Q. What did GE propose by way of CT? 09:33:22</p> <p>MR. TATE: Make the same objection. It 09:33:24 goes beyond the scope of direct and this line of 09:33:25 questioning is irrelevant. 09:33:28</p> <p>A. A Prospeed. 09:33:29</p> <p>Q. What were the specs on the Prospeed? 09:33:32</p> <p>MR. TATE: Objection. Mischaracterizes the 09:33:35 witness's previous testimony and assumes facts not in 09:33:36 evidence, lack of personal knowledge. 09:33:39</p> <p>A. The ability to do cardiac scoring, body 09:33:42 scanning, full line of diagnostic procedures that a 09:33:45 normal and customary and imaging practices. 09:33:54</p> <p>Q. Is that what you asked for, or is that what 09:33:57 they proposed? 09:33:59</p> <p>A. That's what we asked for. 09:34:00</p> <p>Q. Okay. What were the specs of the CT equipment 09:34:01</p>	
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		<p>that they proposed? 09:34:04</p> <p>MR. TATE: Objection. Assumes facts not in evidence. This witness has not testified to any specs regarding the CT, would lack personal knowledge regarding that, and goes beyond the scope of direct, and is not relevant to this particular case. 09:34:05 09:34:07 09:34:10 09:34:13 09:34:16</p> <p>Q. (BY MR. CHESNEY) Did GE make a proposal, Mr. King, with regard to CT? 09:34:18 09:34:20</p> <p>A. GE submitted a full-line proposal to us. 09:34:21</p> <p>Q. Including a CT scanner? 09:34:24</p> <p>MR. TATE: Objection. Mischaracterizes the witness's testimony. He did not testify in that manner. It would go beyond the scope of direct, and he would lack personal knowledge to testify to that. 09:34:26 09:34:28 09:34:31 09:34:33</p> <p>Q. Go ahead, Mr. King. 09:34:35</p> <p>A. GE submitted a full package of equipment options for us for the particular pieces of equipment we asked for. 09:34:37 09:34:43 09:34:49</p> <p>Q. All right. Did that include a CT scan? 09:34:49</p> <p>A. It included a CT scanner as well. 09:34:52</p> <p>Q. What was the CT scanner being proposed? 09:34:53</p> <p>A. The Prospeed. 09:34:55</p> <p>Q. The Prospeed. 09:34:56</p> <p>And what number of heat units does the Prospeed have? 09:34:57 09:34:59</p> <p>MR. TATE: Objection. Mischaracterizes the witness's previous testimony. He's never testified with respect to any matter pertaining to the question. It's an irrelevant question, goes beyond the scope of 09:35:01 09:35:03 09:35:08</p>	
310 to 311	16 18	<p>Q. (BY MR. CHESNEY) Did you refer yesterday to the fact that the Toshiba scanner you bought had 3.5 million heat units? 09:36:36 09:36:38 09:36:41</p> <p>A. Yes, I did. 09:36:42</p> <p>Q. And that you referred to it as being a 3.5/900K? Do you recall that? 09:36:42 09:36:49</p> <p>MR. TATE: Objection. Mischaracterizes the witness's testimony. 09:36:51 09:36:53</p> <p>A. Yes, I do. 09:36:55</p> <p>Q. Okay. What do you mean by 3.5 million heat units? 09:36:57 09:37:00</p> <p>A. X-ray tubes are rated at heat capacity. You can exceed -- you cannot exceed that heat capacity. So 3 1/2 million heat units is as much as you can -- actually, 2.9 million heat units is as much as you can run those heater -- those tubes up to. 09:37:04 09:37:07 09:37:13 09:37:17 09:37:20</p> <p>The cooling factor is what made the 09:37:24</p>	Relevance under FRE 401, 402, & 403.

		<p>difference. If you can cool faster, you can scan 09:37:26 faster. 09:37:29</p> <p>Q. And what is the cooling factor affected by? 09:37:29 Is that the 900K that you're talking about? 09:37:31</p> <p>A. That's the 900K. 09:37:34</p> <p>Q. Okay. And the Toshiba CT scanner was a 09:37:35 3.5/900K in that respect -- 09:37:39</p> <p>A. That's correct. 09:37:40</p> <p>Q. -- is that correct? 09:37:41</p> <p>Okay. And what was the Prospeed? 09:37:41</p> <p>A. The same.</p>	
313 to 319	3 4	<p>Q. Okay. Fair enough. So forget about that. 09:39:07 Let's ask about the nuclear medicine 09:39:07 camera. Did GE make a nuclear medicine camera? 09:39:09</p> <p>MR. TATE: Objection. It's irrelevant, 09:39:12 it's beyond the scope of direct, lack of personal 09:39:13 knowledge. 09:39:17</p> <p>A. Yes, they did. 09:39:17</p> <p>Q. And what did they propose, sir? 09:39:18</p> <p>MR. TATE: Same objection. 09:39:20</p> <p>A. I don't remember the exact piece of equipment. 09:39:21</p> <p>Q. You don't remember the name? 09:39:24</p> <p>A. I don't remember the name. I just remember 09:39:25 that it was an inferior piece of equipment. 09:39:27</p> <p>Q. When you say "inferior," inferior to what? 09:39:30</p> <p>MR. TATE: Objection. You're asking the 09:39:33 witness to speculate. The witness has no personal 09:39:34 knowledge regarding -- 09:39:37</p> <p>A. To the other two vendors' proposals. 09:39:38</p> <p>Q. Okay. Is it basically correct, from what you 09:39:41 said yesterday, that there are three types of nuclear 09:39:43 cameras: single-head, fixed dual-head, and 09:39:46 variable-head cameras? 09:39:49</p> <p>MR. TATE: Objection. It mischaracterizes 09:39:49 the witness's testimony. 09:39:51</p> <p>A. My expertise is not in nuclear medicine. That 09:39:54 statement seems to be true. In my understanding, 09:39:58 there are fixed, there are dual-heads, and there are 09:40:03 variables. 09:40:07</p> <p>Q. Fair enough. 09:40:07</p> <p>Was the nuclear camera that GE proposed a 09:40:07 single-head camera? 09:40:10</p> <p>MR. TATE: Objection. It's going beyond 09:40:10 the scope of direct. These line of questioning is 09:40:12 absolutely irrelevant to this case. 09:40:14</p> <p>A. They proposed a single and a variable. 09:40:20</p>	<p>Relevance under FRE 401, 402, & 403. Lack of personal knowledge. Hearsay. Lack of foundation. Calls for an expert witness. The witness is not competent to opine.</p>

Q. Okay. And did you come to the point of deciding which of those you were going to take? 09:40:24 09:40:27

A. We had asked for -- for proposals with cost associated with those proposals. 09:40:31 09:40:37

Q. And did you get them? 09:40:38

A. Yes. 09:40:40

Q. Okay. And was one or other unaffordable of the GE? 09:40:41 09:40:45

A. Yes. 09:40:45

MR. TATE: Objection. 09:40:45

Q. (BY MR. CHESNEY) Did you say "yes," sir? 09:40:46

MR. TATE: I was making an objection. 09:40:48

MR. CHESNEY: Go ahead. 09:40:49

MR. TATE: Assuming facts not in evidence. 09:40:49

The witness has never testified in that manner, so you're mischaracterizing his previous testimony. And this obviously goes beyond the scope of direct examination. 09:40:52 09:40:54 09:40:57 09:40:59

Q. (BY MR. CHESNEY) Was your answer "yes," Mr. King? 09:41:00 09:41:02

A. Yes, it was. 09:41:02

Q. Thank you. 09:41:03

And was it the variable-head camera that was unaffordable? 09:41:03 09:41:06

MR. TATE: Objection. Lack of personal knowledge, mischaracterizes the witness's previous testimony. 09:41:07 09:41:09 09:41:12

A. At the particular time that we sent out these RFPs, there was nothing unaffordable to us. 09:41:13 09:41:16

Q. Is that because you didn't impose any financial limitations on the RFPs at the time? 09:41:19 09:41:21

A. At that time. 09:41:24

Q. Okay. Fair enough. 09:41:25

There came a point, I take it, when the variable camera was unaffordable then -- 09:41:26 09:41:28

MR. TATE: Objection. 09:41:30

Q. (BY MR. CHESNEY) -- is that correct? 09:41:31

MR. TATE: Mischaracterizes the witness's testimony, assumes facts not in evidence, lack of personal knowledge, beyond the scope of direct examination. It's not relevant. 09:41:32 09:41:33 09:41:36 09:41:37

A. Once we received all three packages from all three vendors that we RFP'd, we looked at those packages and made the decision to go with particular pieces of equipment. We had -- we asked for inclusive products, a mammo be included. Some could, some 09:41:40 09:41:43 09:41:48 09:41:53 09:41:58

couldn't provide that. Looked at the PACS as well, 09:42:01
who could provide that, who couldn't provide that. 09:42:08

So it was a total comprehensive package 09:42:10
that we were looking for, but the cost had to be 09:42:12
within a certain margin as well. We had no financial 09:42:14
constraints at the time, but we knew it would be 09:42:18
imposed with those financial constraints. 09:42:21

Q. Okay. So is it fair to say you began by 09:42:23
looking for equipment by giving the proposed vendors a 09:42:26
wish list of what you would like to have in the 09:42:29
facility? 09:42:31

MR. TATE: Objection. Mischaracterizes the 09:42:32
witness's previous testimony. He did not testify that 09:42:33
way. 09:42:35

A. I guess it could be classified as a wish list. 09:42:40
But these were pretty much the prerequisites for 09:42:42
building a center to have success in that center. 09:42:46

Q. Okay. But, for example, it wasn't a 09:42:49
prerequisite that you have a variable-head camera as 09:42:54
opposed to a single-head camera, I take it? 09:42:56

MR. TATE: Objection. Lack of personal 09:42:58
knowledge. It's a hypothetical. Mischaracterizes the 09:42:59
witness's previous testimony, assumes facts not in 09:43:02
evidence, asking the witness to speculate. 09:43:04

A. At that time we -- we specified none of the 09:43:07
above. We wanted to see what the proposals were. 09:43:11

Q. Okay. And eventually the first proposal you 09:43:13
accepted, subject to getting the financing arranged, 09:43:18
was Philips, was it not? 09:43:21

MR. TATE: Objection. Assuming facts not 09:43:23
in evidence, mischaracterizes any testimony that's 09:43:26
been given in this particular case, and lack of 09:43:28
personal knowledge. 09:43:30

A. Philips Medical was a vendor of choice once we 09:43:33
went through the process. 09:43:37

Q. And am I not correct, sir, that the nuclear 09:43:37
medicine camera that Philips proposed and that was 09:43:41
going to be part of the package you intended to buy 09:43:43
from Philips was a single-head nuclear camera? 09:43:46

MR. TATE: Objection. Assumes facts not in 09:43:49
evidence, lack of personal knowledge, mischaracterizes 09:43:51
the witness's previous testimony. 09:43:53

A. I'm not sure that's correct. 09:43:54

Q. You don't recall whether it was or wasn't? 09:43:56

A. I don't recall. 09:43:58

Q. Okay. Fair enough. 09:43:59

		<p>With regard to the R & F room, what did GE 09:44:01 propose? 09:44:09</p> <p>MR. TATE: Objection. It's irrelevant, 09:44:09 it's beyond the scope of direct, assumes facts not in 09:44:10 evidence. 09:44:14</p> <p>A. GE proposed a Legacy with a 12-inch II. I, 09:44:16 letter I. 09:44:30</p> <p>Q. E-Y-E? 09:44:35</p> <p>A. No. I. And an overhead tube and crane with 09:44:37 an upright bucket. 09:44:40</p> <p>Q. Was that a different or similar configuration 09:44:48 to the one that you eventually got from Toshiba? 09:44:50</p> <p>MR. TATE: Objection. Asking for 09:44:53 speculation, assuming facts not in evidence. 09:44:55</p> <p>A. They -- all the vendors had the same 09:45:04 prerequisite as far as specifications went. The II 09:45:09 was important to get 12 or 14. I believe Toshiba 09:45:11 supplied a 14. And Philips was supplying a 14 or a 09:45:16 15. 09:45:19</p> <p>Q. Okay. And is a 14 somewhat better than a 12? 09:45:20</p> <p>MR. TATE: Objection. Mischaracterize the 09:45:23 witness's previous testimony. He did not testify in 09:45:25 that manner. 09:45:27</p> <p>A. A 14 is not better. A 14 just covers more 09:45:29 area. 09:45:31</p>	
327 to 329	16 12	<p>Q. (BY MR. CHESNEY) What was the reason you went 09:54:40 with Philips? 09:54:42</p> <p>A. We asked for a full-line package. And GE and 09:54:42 Philips were the only two that can supply us with a 09:54:49 full line. When I say full line, that was 09:54:51 mammography, the CTs, the nuke, the MRI, the x-ray, 09:54:56 and also -- also the PAC systems. They had their own 09:55:00 PACS as well as -- and GE as well did. So both had 09:55:04 full line. Toshiba, the third vendor, didn't have 09:55:08 full line. And they had to go and -- and partner with 09:55:12 a PACS company and then partner with a mammo -- 09:55:15 mammography company. 09:55:20</p> <p>Q. And AGFA was the PACS company you're referring 09:55:21 to that Toshiba worked with; is that correct? 09:55:25</p> <p>A. That's correct. 09:55:26</p> <p>Q. Okay. Very good. 09:55:28</p> <p>So GE and Philips provided you with 09:55:28 full-line proposals, correct? 09:55:32</p> <p>A. That's correct. 09:55:33</p> <p>Q. Why did you choose Philips rather than GE? 09:55:33</p> <p>A. I've had extensive experience with Philips. 09:55:36</p>	Misleading.

		<p>I've bought them in the past, been very happy with their service, been very happy with the product. I replaced \$2 1/2 million worth of GE equipment with Philips equipment in the facility I'm at today. I did that in '94, '95, '96, and '97.</p> <p>Q. Now, I think you said that originally when you contacted the potential vendors you didn't put any financial limitation on how they should structure their response, is that fair to say?</p> <p>A. That's correct.</p> <p>Q. I think you also said that you did realize that at some point there would be financial limitations on what you could purchase though, is that also true?</p> <p>MR. TATE: Objection. Mischaracterizes the witness's previous testimony.</p> <p>A. The entrepreneurs that I was working for at that time gave me no limitations. We put the package together. And it's easier to start from the top and come down than it is to start from the bottom and go up.</p> <p>Q. Fair enough.</p> <p>And is that how you approached the purchase of equipment, starting from the top that is and going down, as might be necessary with regard to financial limitations?</p>	
330 to 333	22 25	<p>Q. (BY MR. CHESNEY) After going through the RFP process, you selected Philips as your proposed vendor? "You" being DeSoto. Is that correct?</p> <p>MR. TATE: Objection, as to the RFP process and the meaning of the RFP process.</p> <p>A. We called our prospective vendors to let them know that -- let them know that we were going to the RSNA and that we wanted to look at their equipment again, and two weeks after we returned from the RSNA, we would be making a selection; that they needed to have their proposals in order, and we would need to see some equipment while we were visiting.</p> <p>Q. Okay. Fair enough.</p> <p>And did you then go to the RSNA?</p> <p>A. We did.</p> <p>Q. Who all went to the RSNA?</p> <p>A. Dr. Carvel, Randon Carvel, myself, and my wife.</p> <p>Q. Okay. And did you view the equipment of each vendor at the RSNA?</p>	Misleading. Lack of personal knowledge.

A. We -- we viewed several pieces of equipment 10:00:05
not on our RFP list. 10:00:10

Q. When you say your "RFP list," could you 10:00:14
explain what you mean by that? 10:00:17

A. We only had three that we initially issued the 10:00:18
RFP to. But vendors are like hawks, and they hear you 10:00:21
putting a request out and they come rolling in the 10:00:24
door. So we had one or two that came in the door late 10:00:26
that had packages they wanted to put together and show 10:00:29
us as well. 10:00:32

Q. Okay. I'm following you now. 10:00:33

My question really was that when you went 10:00:35
to the RSNA, did you look at the equipment that you 10:00:37
were thinking about that had been proposed by the 10:00:39
three vendors you had spoken to? 10:00:42

A. We looked at two of the three vendors. 10:00:44

Q. Which two? 10:00:46

A. Philips and GE. 10:00:46

Q. You didn't look at Toshiba? 10:00:47

A. We went -- we looked at the Toshiba magnet. 10:00:49

Q. Okay. 10:01:04

MR. TATE: Just to clarify, when you say 10:01:04
"we" I'm not sure who "we" is. 10:01:06

THE WITNESS: Dr. Carvel and I looked at 10:01:09
the Toshiba magnet. 10:01:10

MR. CHESNEY: Okay. That's fine. 10:01:11

THE WITNESS: I don't know. Randon might 10:01:13
have been there too, because we got to listen to the 10:01:15
quietness of the magnet. Toshiba at that time didn't 10:01:17
have one of two things, enough service personnel to go 10:01:24
around, enough sales personnel to go around to be 10:01:27
shared among us and -- 10:01:30

Q. (BY MR. CHESNEY) Is this at the RSNA you're 10:01:31
talking -- 10:01:33

A. This is at the RSNA. 10:01:33

So we kind of got put back on the back 10:01:35
burner and sat down in a chair and waited a little 10:01:38
while before -- 10:01:40

Q. All right.

I'm sorry. I'm sorry. Go ahead. 10:01:41

A. We waited on vendors to -- those -- those 10:01:41
vendors to come to us. 10:01:44

Q. Isn't it true that actually Dave Steiff made a 10:01:46
special appointment for DeSoto to attend the Toshiba 10:01:49
booth before the RSNA show got very active and that 10:01:55
you were unable to make that appointment? 10:01:59

		<p>A. That is correct. 10:02:00</p> <p>Q. And is that one of the reasons you had to then sit around, as you put it? 10:02:02</p> <p>MR. TATE: Objection. Speculation. 10:02:05</p> <p>MR. CHESNEY: Fair enough. I'll withdraw that question. 10:02:06</p> <p>Q. (BY MR. CHESNEY) After the RSNA, did DeSoto select a vendor? 10:02:10</p> <p>A. We selected the only vendor that felt comfortable enough to have confidence in us to build this project. 10:02:12</p> <p>Q. And who was that? 10:02:23</p> <p>A. Philips Medical System. 10:02:27</p>	
334 to 335	23 11	<p>Q. Okay. Now, you say GE submitted astronomical quotes? 10:03:42</p> <p>A. Yes. 10:03:45</p> <p>Q. Could you just expand on what you mean by "astronomical"? 10:03:46</p> <p>A. Over any of the quotes that we had, they were probably \$500,000 more. 10:03:53</p> <p>Q. In total? 10:03:56</p> <p>A. In total. 10:03:56</p> <p>Q. Okay. For the equivalent modalities -- 10:03:57</p> <p>A. Yes. 10:03:59</p> <p>Q. -- that were being offered by the other vendors? 10:04:00</p> <p>A. Yes. 10:04:02</p>	Relevance under FRE 401, 402, & 403.
337 to 340	4 23	<p>337</p> <p>4 Q. Fair enough. 10:05:28</p> <p>5 All right. Okay. 10:05:31</p> <p>6 So Toshiba and Philips after the RSNA made 10:05:43</p> <p>7 timely quotes -- 10:05:49</p> <p>8 A. That's correct. 10:05:50</p> <p>9 Q. -- correct? 10:05:50</p> <p>10 And GE did not make a timely quote? 10:05:51</p> <p>11 A. That is correct. 10:05:54</p> <p>12 Q. And when it did, it was a quote that you 10:05:54</p> <p>13 viewed as astronomical, correct? 10:05:56</p> <p>14 A. That is correct. 10:05:59</p> <p>15 Q. Okay. After Toshiba and Philips made their 10:06:01</p> <p>16 quotes, you then selected Philips as the vendors, 10:06:03</p> <p>17 correct? 10:06:06</p> <p>18 MR. TATE: Objection. Mischaracterizes the 10:06:07</p> <p>19 witness's previous testimony. 10:06:09</p> <p>20 MR. CHESNEY: Okay. I'll rephrase it. 10:06:10</p> <p>21 Q. (BY MR. CHESNEY) After Toshiba and Philips 10:06:14</p>	Relevance under FRE 401, 402, & 403.

22 submitted their timely quotes after the RSNA, did you 10:06:15
 23 select a vendor? 10:06:19

24 A. We selected on the total package concept, and 10:06:20
 25 Philips was the only one of those two that had a total 10:06:24

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1 package. 10:06:26

2 Q. So who did you select? 10:06:27

3 A. Philips Medical System. 10:06:28

4 Q. Okay. Then what happened in your dealings 10:06:30
 5 with Philips? 10:06:32

6 A. We started to tune that package with -- with 10:06:33
 7 our equipment needs. We started looking at those 10:06:39
 8 really, really closely to make sure that those were -- 10:06:44
 9 things that we had been promised were in that quote. 10:06:47
 10 And later, Randon started arranging the financing 10:06:54
 11 side. We had several meetings with them concerning -- 10:07:02
 12 concerning the finance side. I wasn't involved in 10:07:05
 13 that portion of it too much. Not enough to -- to give 10:07:14
 14 you any -- any idea that I knew what was going on on 10:07:17
 15 the finance. I didn't understand it. 10:07:22

16 Q. Okay. You say, however, that you were 10:07:25
 17 involved in the equipment side, is that fair? 10:07:27

18 A. That's correct. That is correct. 10:07:29

19 Q. And I think you said tuning the equipment or 10:07:31
 20 tuning the equipment needs. I wasn't quite clear. 10:07:33

21 One or the other. 10:07:36

22 A. Tuning the list of -- of accessories, the 10:07:37
 23 applications of the piece of equipment, what we needed 10:07:40
 24 to see, and the habitus of a particular area, can it 10:07:42
 25 penetrate that, and those type questions had to be 10:07:46

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1 answered then. 10:07:48

2 Q. Now, you talked about the habitus. Just so 10:07:55
 3 the record is clear, by "habitus" do you basically 10:07:58
 4 mean patient size? 10:08:02

5 A. The patient size in north Mississippi is 10:08:03
 6 larger than up North or out West or out East. For our 10:08:08
 7 class of folks, we're ranging from two to 350 in 10:08:13
 8 weight class. 10:08:17

9 Q. Okay. And does that affect the ease with 10:08:26
 10 which such people can be scanned in various 10:08:32
 11 modalities? 10:08:34

12 MR. TATE: Objection. Mischaracterizes the 10:08:34
 13 witness's previous testimony. 10:08:36

		<p>14 MR. CHESNEY: I'm just asking. 10:08:37</p> <p>15 MR. TATE: Assumes facts not in evidence. 10:08:38</p> <p>16 MR. CHESNEY: Fine. 10:08:39</p> <p>17 Q. (BY MR. CHESNEY) I'm just asking you a 10:08:40</p> <p>18 question. 10:08:42</p> <p>19 A. Yes, it does. 10:08:42</p> <p>20 Q. Okay. How does it affect that? 10:08:43</p> <p>21 A. It affects it simply because the penetration 10:08:48</p> <p>22 of a product is designed to only go so deep. 10:08:53</p> <p>23 Sonographywise, if you don't have the additional band 10:09:05</p> <p>24 width to -- to go to depths of 3 or 4 inches into the 10:09:08</p> <p>25 organ base, you can't very well identify the shadows 10:09:11</p> <p>340</p> <p>1 or the organ itself. The fat obliterates. Size of 10:09:15</p> <p>2 the patient looking at particular organs obliterates. 10:09:22</p> <p>3 If you're doing a CT, your heat units 10:09:26</p> <p>4 absorbed by the fat, because it takes more to get to 10:09:30</p> <p>5 penetrate. X-ray is the same way, it takes more to 10:09:33</p> <p>6 penetrate. And any time you're giving more radiation, 10:09:37</p> <p>7 you're -- that's simply what you're doing, you're 10:09:41</p> <p>8 radiating the body with more radiation. 10:09:44</p> <p>9 MR is the same way. You know, you larger 10:09:45</p> <p>10 folks have a tendency to ground out the system by 10:09:51</p> <p>11 touching the edges of the bore. The crispness, the 10:09:54</p> <p>12 clarity of the image on all aspects of imaging with 10:10:11</p> <p>13 larger patients is real critical because of their size 10:10:11</p> <p>14 and the amount of fat and dense muscle and large bone 10:10:11</p> <p>15 that they may carry. 10:10:14</p> <p>16 Q. Okay. So that's basically what you mean by 10:10:21</p> <p>17 patient habitus? 10:10:23</p> <p>18 A. That's correct. 10:10:24</p> <p>19 Q. I got you. Okay. 10:10:25</p> <p>20 Back to Philips. 10:10:27</p> <p>21 A. Okay. 10:10:28</p> <p>22 Q. Philips was the initial selection as DeSoto's 10:10:29</p> <p>23 vendor, correct?</p>	
341 to 344	4 25	<p>341</p> <p>4 Q. (BY MR. CHESNEY) After you selected Philips 10:10:42</p> <p>5 as a proposed vendor, it's fair to say, is it not, 10:10:43</p> <p>6 that Philips did not end up supplying DeSoto with the 10:10:50</p> <p>7 equipment? 10:10:56</p> <p>8 A. That is correct. 10:10:56</p> <p>9 Q. Give me your best understanding as to how that 10:10:58</p> <p>10 came about. 10:11:00</p> <p>11 MR. TATE: Objection. Speculation, lack of 10:11:01</p>	Lack of personal knowledge. FRE 106 competence.

12 personal knowledge, beyond the scope of the direct 10:11:03
 13 examination. 10:11:05
 14 Go ahead. 10:11:07
 15 A. I'm not as familiar with the financial side as 10:11:08
 16 I would like to have been at the time. I just 10:11:11
 17 understand that we were required by our first pick 10:11:14
 18 vendor to acquire a CON for the state of Mississippi 10:11:20
 19 for MRI services, and that was a contingent on that 10:11:24
 20 purchase. 10:11:28
 21 Q. And -- I'm sorry. 10:11:34
 22 A. We elected not to -- to put ourselves in that 10:11:35
 23 jeopardy. We knew we could get the CON. But when the 10:11:41
 24 finance company put those restraints on us, we elected 10:11:45
 25 not to deal with them at -- at that point. 10:11:49

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1 Q. Okay. Were there other restrictions that the 10:11:51
 2 finance company was imposing, to your understanding, 10:11:54
 3 that made them unacceptable? 10:11:57
 4 A. I have no idea. 10:11:58
 5 Q. Isn't it true that the Philips financing was, 10:12:01
 6 in fact, asking Dr. Carvel to guarantee Philips a 10:12:04
 7 larger share of DeSoto's initial revenues than 10:12:10
 8 Dr. Carvel was agreeable with? 10:12:13
 9 MR. TATE: Objection. Absolutely 10:12:15
 10 irrelevant. He lacks personal knowledge, asking him 10:12:18
 11 to speculate beyond the scope of direct examination. 10:12:20
 12 A. A lot of the financial portion of this I 10:12:23
 13 wasn't involved in. My package was the technologist 10:12:26
 14 and the equipment. Theirs was the finance side. 10:12:29
 15 Q. I understand. 10:12:32
 16 I'm just asking -- 10:12:33
 17 A. Again, I understood nothing about what -- even 10:12:34
 18 the meetings I sat in on, they were very Greek to me. 10:12:37
 19 Q. Okay. Okay. 10:12:43
 20 What's your understanding as to why DeSoto 10:12:47
 21 ultimately did not take delivery of Philips equipment? 10:12:50
 22 MR. TATE: Objection. Asked and answered. 10:12:53
 23 A. We were on a critical timeline, and the CON 10:12:57
 24 constraint was the only one I knew of at the time. 10:13:02
 25 We -- we were fixing to go up for our CON in February 10:13:06

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1 and -- and the timeline is that we wanted to be open 10:13:09
 2 by the end of that year. 10:13:16
 3 Q. Was that February of 2000? 10:13:20

4 A. It was February of 2000. 10:13:22
5 Q. And DeSoto wanted to be open by the end of 10:13:29
6 2000? 10:13:32
7 A. That's correct. 10:13:32
8 Q. Okay. After the deal with -- proposed deal 10:13:36
9 with Philips broke down, what happened next in terms 10:13:40
10 of DeSoto's efforts to get equipment? 10:13:42
11 A. The -- the absolute breakdown occurred with 10:13:44
12 Philips is when we lost our sales guy and his boss, 10:13:47
13 who was the salesperson spearheading that decision. 10:13:53
14 And once those two people fell out, we had nobody to 10:13:57
15 take care of us with Philips. 10:13:59
16 Then the finance side kind of went sour 10:14:03
17 because of the CON constraints. I think we could have 10:14:05
18 lived with one if we would have had the other two 10:14:08
19 pieces of their operation in place. But our two 10:14:13
20 salespeople, our primary and -- and his boss, both had 10:14:17
21 left the service, which kind of left us out in the 10:14:20
22 lurch. 10:14:25
23 So with that happening, we decided to call 10:14:25
24 our second choice, which was Toshiba, even after we 10:14:32
25 had heard the comments that he had made out in the 10:14:38

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1 general medical public about our project being a flop 10:14:40
2 and it was just a pipe dream and we would never 10:14:45
3 succeed. 10:14:48
4 That was the other decision we went with 10:14:51
5 Philips for is because they believed that our project 10:14:53
6 would succeed. Toshiba, GE -- GE absolutely didn't 10:14:55
7 believe it would succeed. And Toshiba had its doubts 10:14:59
8 as well. 10:15:01
9 Q. Toshiba did make you a proposal, correct? 10:15:03
10 A. They did make a proposal, yes. 10:15:05
11 Q. And Toshiba actually financed the project for 10:15:07
12 you, correct? 10:15:09
13 A. I think once they saw that they had a second 10:15:09
14 opportunity, they came back to play. And they knew 10:15:13
15 that we had -- we had already purchased a lot, we had 10:15:15
16 already applied for our CON, we had already met with a 10:15:18
17 builder, this project was going forward. And I think 10:15:22
18 the -- they recognized at that point that these guys 10:15:26
19 are for real and -- and that that time they wanted to 10:15:29
20 play a little bit. 10:15:32
21 Even GE came back at that point and wanted 10:15:33
22 to play a little bit, but we wouldn't play with them. 10:15:35

		<p>23 Q. Well, this was all a pretty fast turnaround 10:15:39</p> <p>24 between the RSNA show and the point where you started 10:15:44</p> <p>25 to get Toshiba back in the picture; is that right? 10:15:48</p>	
348 to 350	18 8	<p>348</p> <p>18 Q. (BY MR. CHESNEY) Do you have a recollection 10:19:52</p> <p>19 as to when you told Toshiba that they would have an 10:19:54</p> <p>20 opportunity to sell the equipment despite the fact 10:20:00</p> <p>21 that you had originally decided to go with Philips? 10:20:03</p> <p>22 MR. TATE: Objection. Lack of personal 10:20:05</p> <p>23 knowledge, goes beyond the scope of direct. 10:20:08</p> <p>24 A. I don't have the exact time frame, but I know 10:20:10</p> <p>25 that Lynn and I had talked and she was upset that we 10:20:13</p> <p>349</p> <p>1 couldn't -- we couldn't go with this vendor of choice. 10:20:17</p> <p>2 And she asked my opinion, and I told her that's the 10:20:20</p> <p>3 reason I put together those three vendors, and that 10:20:22</p> <p>4 was GE, Philips, and Toshiba. And Toshiba certainly 10:20:25</p> <p>5 came in there with their -- with a good quote. And if 10:20:28</p> <p>6 they could supply the PAC side of that, I think we 10:20:31</p> <p>7 need to go with them. 10:20:34</p> <p>8 Q. And subsequently to that discussion with 10:20:38</p> <p>9 Dr. Carvel, did you then go back to Toshiba and tell 10:20:41</p> <p>10 them that they would have an opportunity to sell the 10:20:44</p> <p>11 equipment? 10:20:46</p> <p>12 A. Within a very short time frame, I called Dave 10:20:47</p> <p>13 Steiff up and I told him that I had heard that he had 10:20:49</p> <p>14 been out talking about us, bad-mouthing us at other 10:20:52</p> <p>15 facilities. And he kind of stammered a little bit and 10:20:56</p> <p>16 fell over his own feet with -- with some kind of 10:21:02</p> <p>17 rhetoric comment. But this was from reputable people 10:21:05</p> <p>18 in my respect. But I told him that he had a chance to 10:21:09</p> <p>19 come back in here at this point and put this bed back 10:21:12</p> <p>20 together, this quote back together, and resubmit 10:21:15</p> <p>21 another package to us. 10:21:16</p> <p>22 Q. Okay. And after your discussion with 10:21:18</p> <p>23 Mr. Steiff, did he in fact put together another 10:21:20</p> <p>24 package for you? 10:21:23</p> <p>25 A. He put together another package. 10:21:24</p> <p>350</p> <p>1 Q. Right. 10:21:26</p> <p>2 The record won't show this, but you appear 10:21:28</p> <p>3 to be emphasizing "another"? 10:21:30</p> <p>4 A. Another, yes. 10:21:31</p> <p>5 Q. And that's because it was a different package 10:21:34</p>	

		6 than the original package? 10:21:36 7 A. In my opinion, it was. 10:21:37 8 Q. Okay. Well, tell us why that was your 10:21:39	
353 to 354	7 16	353 7 Q. With regard to the nuclear cameras, what did 10:25:23 8 you look at at Pensacola? 10:25:25 9 A. We looked at all three cameras. They were all 10:25:27 10 in the room. Talked to the techs and got their 10:25:30 11 impression of -- of the scanning of those -- the 10:25:33 12 scanning techniques and the type of exams that those 10:25:35 13 could do. 10:25:38 14 Q. When you say "all three cameras," do you mean 10:25:39 15 single-head, fixed dual-head, variable head? 10:25:42 16 A. That's correct. 10:25:44 17 Q. Okay. Okay. 10:25:47 18 Are you dry? 10:25:48 19 A. No. Go ahead. 10:25:50 20 Q. Okay. And when you say we looked, who is 10:25:53 21 "we"? 10:25:54 22 A. Dr. Carvel and I did. 10:25:55 23 Q. Okay. I forgot to ask you, was Mr. Carvel 10:25:57 24 there or not, do you recall? 10:26:00 25 A. He was. 10:26:01 354 1 Q. Okay. Just to save time down the road, is it 10:26:01 2 fair to say that DeSoto was not looking to Mr. Carvel 10:26:06 3 to make any technical judgments about the equipment 10:26:10 4 they were going to be using at the facility? 10:26:13 5 A. Randon was the finance guy. So if it 10:26:18 6 concerned finance, yes, he had the -- he -- he had the 10:26:22 7 decision there. 10:26:25 8 Q. Fair enough. 10:26:26 9 But in terms of technical characteristics 10:26:27 10 and performance characteristics of the equipment, that 10:26:29 11 wasn't something Mr. Carvel was involved? 10:26:32 12 A. No. 10:26:34 13 Q. Okay. Okay. 10:26:36 14 So you went to Pensacola and you looked at 10:26:36 15 these three cameras. Was one of them the 7200? 10:26:39 16 A. Yes, it was. 10:26:43	Lack of personal knowledge.
361 to 366	9 25	361 9 I think you said that the techs there told 10:49:10 10 you that the 7200 could only do hearts by using a 10:49:12 11 single-head; is that correct? 10:49:17 12 A. That's correct. 10:49:18	Speculation. Lack of personal knowledge. FRE 106 competence.

13 Q. Okay. Did they tell you how long that took, 10:49:19
14 roughly? 10:49:21

15 A. They did not. 10:49:21

16 Q. Did anyone tell you that it took about 18 to 10:49:22
17 20 minutes? 10:49:25

18 A. I don't recall anyone telling me that. 10:49:26

19 Q. You don't recall anybody telling you that -- 10:49:28

20 A. I don't recall that. 10:49:30

21 Q. -- when you were at Pensacola? 10:49:31

22 A. Yeah. 10:49:33

23 MR. TATE: And we're talking about the 10:49:33

24 Pensacola employees; is that correct? 10:49:35

25 MR. CHESNEY: That is correct. 10:49:36

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1 Q. (BY MR. CHESNEY) They just told you that they 10:49:38
2 avoided doing it because it could only be acquired in 10:49:41
3 one head? 10:49:44

4 A. No. They -- they had a specified regimen for 10:49:46
5 doing exams and the -- all the hearts were done on the 10:49:50
6 variable angle, and the bones were done on the 10:49:53
7 dual-head, and some of the long and other specs were 10:49:58
8 done on the single-head. They had a pretty set 10:50:02
9 protocol for doing things. 10:50:05

10 Q. All right. Did they tell you how long it took 10:50:06
11 to do hearts on the variable-head camera? 10:50:08

12 A. I don't recall them telling me that either. 10:50:13

13 Q. Okay. Okay. 10:50:28

14 Let us return to the process again by 10:50:36
15 which DeSoto was acquiring equipment for its new 10:50:42
16 facility. 10:50:46

17 A. Okay. 10:50:46

18 Q. You had said that Mr. Steiff, after you 10:50:48
19 recontacted him and told him that he had an 10:50:51
20 opportunity again to provide a quote, provided you 10:50:54
21 with a different proposal than the first one; is that 10:50:59
22 correct? 10:51:01

23 A. In my opinion, it was a different one. It was 10:51:02
24 another one altogether. 10:51:05

25 Q. Okay. Can you tell us how it differed from 10:51:08

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1 the first one, as best you can? 10:51:09

2 Well, let me ask you. I think -- did it 10:51:12
3 differ in price? 10:51:14

4 MR. TATE: Objection. Lack of personal 10:51:20

5 knowledge. 10:51:22
6 MR. CHESNEY: Let's do it the easy way. 10:51:24
7 Q. (BY MR. CHESNEY) Just tell us, as best you 10:51:27
8 can, how it differed from the original proposal that 10:51:28
9 was made by Toshiba. 10:51:30
10 A. I can't remember if it differed in price. All 10:51:31
11 of them differed in price. That was what the 10:51:33
12 fine-tuning process was all about. 10:51:36
13 Q. Fair enough. 10:51:41
14 Tell us the best you can about how it did 10:51:42
15 differ from the original proposal. 10:51:44
16 A. The guidelines that we set on the original 10:51:49
17 proposal were that we would -- we had issued the 10:51:51
18 workless management, which was in on the first quote. 10:51:56
19 We had issued the habitus statement, which was the 10:52:00
20 large patient statement. We had issued the 10:52:04
21 integration between the PACS and the imaging 10:52:09
22 equipment. And price was certainly a constraint as 10:52:16
23 well. 10:52:20
24 Q. Okay. When did price come to be a constraint? 10:52:35
25 MR. TATE: Objection. Asks for 10:52:38

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1 speculation, mischaracterizes the witness's previous 10:52:39
2 testimony. 10:52:42
3 A. The pricing was not my arena of concern. 10:52:44
4 Q. That wasn't my question. 10:52:52
5 You had said that pricing was a 10:52:54
6 constraint. Presumably you, therefore, at some point 10:52:56
7 came to know that pricing was a constraint, correct? 10:52:58
8 MR. TATE: Objection. Mischaracterizes the 10:53:00
9 witness's previous testimony, asked and answered. 10:53:02
10 A. When the -- I don't recall exactly how this 10:53:07
11 happened. But the two entrepreneurs told me that at 10:53:12
12 one point along the way, once we received our 10:53:18
13 packages, that we had limited amount of monies that we 10:53:21
14 needed to try to stay within, but if the financing arm 10:53:24
15 of any of those companies could make this happen, then 10:53:28
16 we could -- we could utilize their quotes. 10:53:32
17 Q. If the financing arm of the company you were 10:53:37
18 dealing with could make a deal happen within the 10:53:40
19 amount you wanted to stay within, you could use their 10:53:44
20 quotes; is that correct? 10:53:47
21 MR. TATE: Objection. Mischaracterizes the 10:53:47
22 witness's previous testimony. 10:53:49
23 A. It's my understanding. 10:53:50

24 Q. Okay. And was that amount \$2.5 million for 10:53:51
25 equipment? 10:53:56

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1 A. I thought the amount was 2.9 million, myself. 10:54:01
2 So I -- again, I -- the finance side of that was not a 10:54:05
3 great concern of mine. I was putting together a 10:54:09
4 package. 10:54:13

5 Q. Okay. Did 2.9 include all modalities? 10:54:14

6 A. My understanding, 2.9 was our -- our bottom 10:54:20
7 line, that we couldn't go any more over 2.9. 10:54:23

8 Q. Was that for everything? 10:54:26

9 A. That was for everything. 10:54:27

10 Q. Would that include mammo? 10:54:28

11 A. Mammo. 10:54:29

12 Q. Did that include PACS? 10:54:30

13 A. PACS. 10:54:31

14 Q. Was it all ancillary equipment that you 10:54:33
15 needed? 10:54:41

16 MR. TATE: Objection. Lack of personal 10:54:41
17 knowledge. 10:54:42

18 A. I don't know what ancillary equipment that you 10:54:44
19 would be referring to, because each one of the 10:54:47
20 modalities came with the ancillary equipment necessary 10:54:50
21 to operate that equipment. 10:54:55

22 Q. You mean on the quote you received, each 10:54:58
23 modality specified what components would come with 10:55:02
24 that modality; is that correct? 10:55:04

25 A. That means that -- yes, that's correct. 10:55:07

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1 Q. Okay. Fair enough. 10:55:15

2 Now, I'm sorry, but I'm still trying to 10:55:17
3 figure out how the second quote that was made by 10:55:20
4 Toshiba was, in your opinion, different from the 10:55:24
5 original quote was made by Toshiba. 10:55:28

6 A. The second quote didn't include workless 10:55:29
7 management, as we looked at it at a later date. 10:55:32

8 Q. Okay. Anything else? 10:55:36

9 A. Workless management was one. Integration -- 10:55:37
10 seamless integration to the PACS environment, the 10:55:41
11 import-export mechanism. Vascular package that was on 10:55:46
12 the first quote that we -- we understood it to be on 10:55:55
13 the first quote, that was one of the prerequisites 10:55:59
14 again that we could do CTAs. We bought a vitreal 10:56:02
15 workstation as well, to enhance that CTA capability. 10:56:07

		<p>16 It wasn't for the magnet, that was for the CT side. 10:56:12</p> <p>17 These are things that we had requested from all three 10:56:20</p> <p>18 vendors on the front end. 10:56:24</p> <p>19 We -- within the first quote, we 10:56:26</p> <p>20 recognized that these prerequisites were met. And 10:56:33</p> <p>21 then we subsequently chose Philips. And then, of 10:56:38</p> <p>22 course, when we elected to go with another vendor 10:56:41</p> <p>23 other than Philips, Toshiba was brought back to the 10:56:45</p> <p>24 table. And what we were originally requesting wasn't 10:56:51</p> <p>25 in that package. 10:56:56</p>	
369 to 370	2 20	<p>369</p> <p>2 Q. (BY MR. CHESNEY) I believe you said yesterday 10:59:35</p> <p>3 that you wanted to make sure that DeSoto's techs would 10:59:37</p> <p>4 make every legitimate call that they could to the 10:59:41</p> <p>5 Toshiba service people; is that correct? 10:59:45</p> <p>6 A. That is correct. 10:59:47</p> <p>7 Q. And was one of those reasons -- was one of the 10:59:48</p> <p>8 reasons for that, if I remember you correctly -- and 10:59:51</p> <p>9 if I don't, please tell me -- that you wanted to make 10:59:54</p> <p>10 sure the service people understood that they needed to 10:59:56</p> <p>11 be responsive to DeSoto's needs? 10:59:58</p> <p>12 A. That was one of the reasons, yes. 11:00:01</p> <p>13 Q. And was that, in part, because historically 11:00:03</p> <p>14 you have felt that you have to do that to make sure 11:00:08</p> <p>15 service people do what you need them to do? 11:00:10</p> <p>16 A. Yes, I did. 11:00:13</p> <p>17 Q. And is it fair to say that that was a 11:00:14</p> <p>18 perception you had not particularly about Toshiba 11:00:16</p> <p>19 service people but service people in the industry in 11:00:18</p> <p>20 general? 11:00:20</p> <p>21 A. Service people in general. 11:00:21</p> <p>22 Q. Okay. Now, you were asked a number of 11:00:24</p> <p>23 questions by Mr. Tate yesterday relating to specific 11:00:26</p> <p>24 service calls that were made, do you recall -- 11:00:29</p> <p>25 A. Yes. 11:00:31</p> <p>370</p> <p>1 Q. -- some of those questions? 11:00:31</p> <p>2 And I think with regard to some of them 11:00:34</p> <p>3 you said that you thought they were equipment issues, 11:00:36</p> <p>4 correct? 11:00:39</p> <p>5 A. Yes. 11:00:39</p> <p>6 Q. And I think you said some of them you thought 11:00:39</p> <p>7 could be operator issues? 11:00:42</p> <p>8 A. Yes. 11:00:43</p> <p>9 Q. Is it fair to say that you felt that your 11:00:44</p>	

		<p>10 techs should call in an issue when they had a problem, 11:00:48 11 whether or not they knew if it was an operator or an 11:00:52 12 equipment issue? 11:00:57 13 A. Yes. 11:00:58 14 MR. TATE: Again, I want to make an 11:00:58 15 objection. That would assume facts in evidence, lack 11:01:01 16 of personal knowledge, and goes beyond the scope of 11:01:03 17 direct. 11:01:05 18 Q. (BY MR. CHESNEY) And did you, in fact, tell 11:01:06 19 them to do that? 11:01:08 20 A. I did. 11:01:11</p>	
371 to 373	23 5	<p>371 23 Q. Okay. And did there come a point at which you 11:02:58 24 understood that Mr. Begy or whoever was perhaps his 11:03:01 25 superior had placed a financing limitation on how much 11:03:07</p> <p>372 1 equipment could be financed? 11:03:14 2 MR. TATE: Objection. Lack of personal 11:03:16 3 knowledge. 11:03:17 4 A. The only knowledge I would have -- would have 11:03:22 5 had of that would have been from Randon or Lynn. 11:03:25 6 Q. Okay. That's fine. 11:03:28 7 What did they tell you? 11:03:29 8 A. That we did have a limitation as far as our 11:03:31 9 overall structure went and this was -- my 11:03:34 10 understanding was \$2.9 million for total equipment. 11:03:38 11 Q. And did they also tell you that there was a 11:03:42 12 \$2.5 million financing limit that TAMC was able to 11:03:46 13 provide? 11:03:52 14 A. No, sir, they did not. 11:03:52 15 Q. Did they ever tell you that one reason it was 11:04:00 16 important to have the DeSoto facility up and 11:04:05 17 operational by the end of 2000 was to avoid any 11:04:08 18 potential increased cost in financing the equipment? 11:04:12 19 A. Yes, they did. 11:04:15 20 Q. Okay. Tell us what you can recall about that. 11:04:18 21 Forgive me. 11:04:22 22 First they, by the way, I mean Dr. Carvel 11:04:22 23 or Mr. Carvel. Did you understand that? 11:04:24 24 A. I did understand it. 11:04:26 25 Q. Okay. 11:04:28</p> <p>373 1 A. The only conversations that I can remember, 11:04:28 2 again, the financial portion was not mine to handle, 11:04:30</p>	Hearsay. Lack of personal knowledge. Misleading.

		<p>3 was that if we got it up and we were operational by 11:04:33</p> <p>4 the end of the year, then we would have a cumulative 11:04:36</p> <p>5 savings over the life of the project. 11:04:42</p>	
372 ⁵ to 25	15	<p style="text-align: center;">372</p> <p>15 Q. Did they ever tell you that one reason it was 11:04:00</p> <p>16 important to have the DeSoto facility up and 11:04:05</p> <p>17 operational by the end of 2000 was to avoid any 11:04:08</p> <p>18 potential increased cost in financing the equipment? 11:04:12</p> <p>19 A. Yes, they did. 11:04:15</p> <p>20 Q. Okay. Tell us what you can recall about that. 11:04:18</p> <p>21 Forgive me. 11:04:22</p> <p>22 First they, by the way, I mean Dr. Carvel 11:04:22</p> <p>23 or Mr. Carvel. Did you understand that? 11:04:24</p> <p>24 A. I did understand it. 11:04:26</p> <p>25 Q. Okay. 11:04:28</p>	Hearsay. Lack of personal knowledge. Misleading.
373 to 374	21 15	<p style="text-align: center;">373</p> <p>21 Q. Okay. Prior to October 31st, had any Toshiba 11:05:49</p> <p>22 equipment begun to be installed at DeSoto, to your 11:05:55</p> <p>23 knowledge? 11:05:58</p> <p>24 A. I remember seeing the nuke cameras come 11:06:02</p> <p>25 through the windows, that we had to insert them 11:06:06</p> <p style="text-align: center;">374</p> <p>1 through the window at the time before we could board 11:06:09</p> <p>2 it up. But installation either hadn't begun or was 11:06:11</p> <p>3 just in its preliminary state of setting foundation 11:06:18</p> <p>4 and things. 11:06:21</p> <p>5 Q. Okay. And was there still construction going 11:06:23</p> <p>6 on to the facility while this was happening? 11:06:25</p> <p>7 A. Yes, there was. 11:06:27</p> <p>8 Q. And who was doing that construction? 11:06:28</p> <p>9 A. H & H Building. 11:06:31</p> <p>10 Q. And what was H & H Building doing at the time 11:06:34</p> <p>11 when you -- up until the time you had your heart 11:06:38</p> <p>12 attack? 11:06:40</p> <p>13 A. They were finishing up internal projects, 11:06:42</p> <p>14 mudding walls, painting, laying flooring, putting in 11:06:50</p> <p>15 doorjams. 11:06:57</p>	
375 to 376	9 16	<p style="text-align: center;">375</p> <p>9 Q. Okay. In connection with putting this 11:08:01</p> <p>10 facility together, was it necessary to put in 11:08:04</p> <p>11 shielding for the MR room? 11:08:07</p> <p>12 A. That is correct. 11:08:08</p> <p>13 Q. Okay. Do you know who put the shielding in? 11:08:09</p>	Lack of personal knowledge. Speculation. Misleading.

⁵ This is duplicative to the section designated preceding it.

		<p>14 A. Lindgren Shielding Company. 11:08:12</p> <p>15 Q. Okay. Did you -- well, in terms of when you 11:08:23</p> <p>16 were able to be on site, were you able to observe any 11:08:27</p> <p>17 of the shielding work going on? 11:08:29</p> <p>18 A. The shielding work had already just about 11:08:35</p> <p>19 completed when I got to come into the facility. 11:08:39</p> <p>20 Q. And just for the record, can you explain why 11:08:48</p> <p>21 shielding is necessary in an MR facility? 11:08:52</p> <p>22 A. The MR equipment itself operates on radio 11:08:56</p> <p>23 frequencies. And we elect to introduce our own radio 11:09:01</p> <p>24 frequencies to excite the hydrogen atoms and collect 11:09:04</p> <p>25 that energy back. The shielding prevents radio 11:09:08</p> <p style="text-align: center;">376</p> <p>1 frequency waves from entering into the room, not 11:09:12</p> <p>2 entering it or exiting the room. But entering into 11:09:15</p> <p>3 the room and you get a lot of these frequencies from 11:09:18</p> <p>4 CB radios, RF towers, FM stations sometimes can go 11:09:21</p> <p>5 down on that band width, very unlikely, because they 11:09:27</p> <p>6 operate at such a high pitch. 11:09:30</p> <p>7 The shielding itself prevented that from 11:09:31</p> <p>8 happening in any cracks or any holes, and that 11:09:35</p> <p>9 shielding can give you a little bit of a problem. 11:09:37</p> <p>10 Should be identified as well. 11:09:39</p> <p>11 Q. What kind of problems can result if the 11:09:44</p> <p>12 shielding isn't what it should be? 11:09:47</p> <p>13 A. If you have integrity loss of the shielding, 11:09:50</p> <p>14 you can have -- you can have artifact problems on the 11:09:53</p> <p>15 image quality, some tuning problems can occur. 11:10:00</p> <p>16 That's -- that's pretty much it with the shielding. 11:10:12</p>	
376 to 378	25 20	<p style="text-align: center;">376</p> <p>25 Now, after the Toshiba MR was removed from 11:10:43</p> <p style="text-align: center;">377</p> <p>1 DeSoto -- 11:10:48</p> <p>2 A. Yes. 11:10:50</p> <p>3 Q. -- did Lindgren come in to do any additional 11:10:51</p> <p>4 work? 11:10:54</p> <p>5 A. They did. 11:10:54</p> <p>6 Q. What did they come in to do? 11:10:55</p> <p>7 A. Each magnet had its own standard for a room 11:10:57</p> <p>8 size and consideration. We had to lift the roof in 11:11:05</p> <p>9 one portion, had to run new cabling where Toshiba ran 11:11:08</p> <p>10 underground, we ran overhead when the next magnet came 11:11:13</p> <p>11 in. We also ran a chiller, which is a water-chilled 11:11:16</p> <p>12 device, into that room as well. 11:11:19</p>	Relevance under FRE 401, 402, & 403. Hearsay. Speculation. FRE 106 competence.

		<p>13 So they -- they made sure the integrity of 11:11:20</p> <p>14 the room was solid. They made sure that the cabling 11:11:24</p> <p>15 that ran in their raceways was adequate and not 11:11:29</p> <p>16 touching, which would cause some kind of arcing 11:11:35</p> <p>17 problem, if you -- if you had some. Made sure that 11:11:38</p> <p>18 the wall structure and the ceiling structure were 11:11:42</p> <p>19 of -- of their prerequisite for their shielding and 11:11:46</p> <p>20 their room. And then, of course, the material used 11:11:50</p> <p>21 was copper and make sure the copper was of their 11:11:53</p> <p>22 grade. 11:11:57</p> <p>23 Q. At that point did Lindgren -- Lindgren 11:11:58</p> <p>24 discover that there was actually a hole in the 11:12:01</p> <p>25 shielding that had been at DeSoto? 11:12:04</p> <p style="text-align: center;">378</p> <p>1 A. Yes, they did. 11:12:06</p> <p>2 Q. And did they inform you of that? 11:12:07</p> <p>3 A. Yes, they did. 11:12:08</p> <p>4 Q. Did you look at the hole? 11:12:10</p> <p>5 A. I did. 11:12:12</p> <p>6 Q. What size was it? 11:12:13</p> <p>7 A. The size of a softball. 11:12:15</p> <p>8 Q. Did they offer you any thoughts as to how that 11:12:22</p> <p>9 hole got there? 11:12:25</p> <p>10 A. The gentleman I talked to suggested it looked 11:12:31</p> <p>11 like maybe a two-by-four went through it. 11:12:34</p> <p>12 Q. And where exactly was this hole in the 11:12:44</p> <p>13 shielding? 11:12:47</p> <p>14 A. Above the door entrance to the window side, 11:12:52</p> <p>15 between the window and the door in that crawlspace 11:12:57</p> <p>16 there. 11:13:00</p> <p>17 Q. Is that on the outer wall of the building, or 11:13:02</p> <p>18 the outer wall? 11:13:05</p> <p>19 A. Inner wall. 11:13:06</p> <p>20 Q. Inner wall of the building, okay. 11:13:07</p>	
386 to 388	25 3	<p style="text-align: center;">386</p> <p>25 Q. Okay. But if I understand you correctly -- 11:27:20</p> <p style="text-align: center;">387</p> <p>1 well, tell me, is it correct that this issue of the 11:27:21</p> <p>2 bucky, as you put it I think, getting in the way can 11:27:25</p> <p>3 be dealt with by having the operator manipulate the 11:27:29</p> <p>4 equipment? 11:27:32</p> <p>5 A. That is correct. 11:27:32</p> <p>6 Q. Okay. You also talked with Mr. Tate yesterday 11:27:37</p> <p>7 about some battery failures that occurred with regard 11:27:40</p>	

		<p>8 to the R & F equipment. Do you recall that? 11:27:42</p> <p>9 A. Yes, sir. 11:27:46</p> <p>10 Q. And I think -- well, let me ask you, do you 11:27:46</p> <p>11 know specifically how those batteries work and are 11:27:50</p> <p>12 powered? 11:27:54</p> <p>13 A. No, sir. That was the first encounter I ever 11:27:55</p> <p>14 had with a battery of that size, which is a little 11:27:58</p> <p>15 watch-type battery, a Lithium battery, maintaining 11:28:02</p> <p>16 some kind of software load or procedural load in -- in 11:28:06</p> <p>17 a system that already has a surge protector on it, 11:28:12</p> <p>18 already -- already has a battery backup. I've never 11:28:16</p> <p>19 encountered a little battery going out like that in 11:28:19</p> <p>20 any other piece of equipment. 11:28:21</p> <p>21 Q. So you don't know why that happened in this 11:28:24</p> <p>22 instance? 11:28:26</p> <p>23 A. I have no earthly idea. 11:28:27</p> <p>24 Q. Is it correct that when these batteries 11:28:28</p> <p>25 failed, Toshiba replaced them for you? 11:28:31</p> <p>388</p> <p>1 A. That is correct. 11:28:33</p> <p>2 Q. Did they -- did they do that without charge? 11:28:35</p> <p>3 A. They did. 11:28:37</p>	
389	4 to 10	<p>389</p> <p>4 Q. And the -- the tomo unit you bought from 11:29:48</p> <p>5 Toshiba I think had to be attached and unattached if 11:29:51</p> <p>6 it was being used or not used? 11:29:53</p> <p>7 A. That is correct. 11:29:55</p> <p>8 Q. Okay. And is it fair to say that you were 11:30:03</p> <p>9 aware of that when you purchased the R & F unit? 11:30:04</p> <p>10 A. We were. 11:30:07</p>	
390 to 392	7 18	<p>390</p> <p>7 Q. Do you recall an incident in which the nuclear 11:38:25</p> <p>8 camera, some portion of it, came in contact with a 11:38:31</p> <p>9 patient and bruised a patient's arm? 11:38:33</p> <p>10 A. Yes, I do. 11:38:35</p> <p>11 Q. Okay. Do you know who the operator of the 11:38:37</p> <p>12 equipment was at that time? 11:38:39</p> <p>13 A. May Vokaty. 11:38:42</p> <p>14 Q. Now, were you there when that happened on 11:38:43</p> <p>15 site? 11:38:45</p> <p>16 A. I was on site. 11:38:45</p> <p>17 Q. Okay. Do you have an opinion as to how that 11:38:52</p> <p>18 incident occurred? 11:38:55</p> <p>19 MR. TATE: Objection. Speculation, lack of 11:38:56</p> <p>20 personal knowledge. I believe the witness testified 11:38:57</p>	Speculation.

21 that he was on site. He did not testify that he was 11:38:59
 22 present when the incident occurred. So it would be 11:39:02
 23 mischaracterizing his testimony. 11:39:05
 24 A. May was not an experienced nuclear med tech, 11:39:11
 25 and I think the -- maybe the lack of attendance at the 11:39:14

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1 time might have been a factor. 11:39:23
 2 Q. When you say "lack of attendance," what do you 11:39:34
 3 mean? 11:39:35
 4 MR. TATE: Objection. Speculation. 11:39:38
 5 A. This piece of equipment rotates around the 11:39:42
 6 body. And indeed there was a robo contour center 11:39:44
 7 switch that gave you a sense a -- false sense of 11:39:50
 8 security that it would stop once it contacted the 11:39:53
 9 body. But with that false sense, personal attendance 11:39:55
 10 by the camera might could have prevented it and might 11:40:03
 11 not have prevented it, simply because the camera was 11:40:08
 12 in contact with the body and it was somewhere in the 11:40:10
 13 range of the robo contour center switch. 11:40:14
 14 The presence of a senior nuclear medicine 11:40:20
 15 tech or a trained individual I would -- in my opinion, 11:40:24
 16 quite possibly could have prevented it. But I can't 11:40:29
 17 be 100 percent certain that that would have occurred 11:40:32
 18 as well. 11:40:36
 19 Q. When this event did occur, did you take some 11:40:36
 20 steps to try to find out how it happened? 11:40:39
 21 A. Yes, we did. 11:40:41
 22 Q. Okay. Did you, among other things, take any 11:40:42
 23 steps to try to find out whether the patient had been 11:40:45
 24 in any way restrained or positioned so as to prevent 11:40:48
 25 contact with the camera? 11:40:51

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1 A. Yes, I did. 11:40:52
 2 Q. What did you find out? 11:40:53
 3 MR. TATE: Objection. Calls for hearsay, 11:40:58
 4 lack of personal knowledge. 11:40:59
 5 A. Found out that the patient was placed in a 11:41:02
 6 supine position, which is a face-up position, and the 11:41:06
 7 hands were put behind the head in a relaxed manner. 11:41:10
 8 This particular patient had an arthritic, frozen-type 11:41:16
 9 shoulder on the left side, was unable to put her hands 11:41:21
 10 completely up behind her head. We try not to use 11:41:25
 11 restraints in any form or fashion. This particular 11:41:31
 12 patient did not have a restraint, nor a support 11:41:35

		<p>13 mechanism placed there for her comfort or convenience, 11:41:38</p> <p>14 which allowed her arm to be in -- in some type of 11:41:43</p> <p>15 position for contact. But, again, the robo contour 11:41:47</p> <p>16 was -- was on and the center switch was activated on a 11:41:51</p> <p>17 very sensitive measure, that if it touched, the 11:41:56</p> <p>18 scanner stopped itself. 11:42:00</p>	
393 to 397	21 17	<p>393</p> <p>21 Q. (BY MR. CHESNEY) Mr. King -- 11:42:39</p> <p>22 A. Yes, sir. 11:42:41</p> <p>23 Q. -- at the time of this incident, you were the 11:42:41</p> <p>24 administrator of DeSoto; is that correct? 11:42:43</p> <p>25 A. That is correct. 11:42:44</p> <p>394</p> <p>1 Q. And did you believe it was part of your duty 11:42:44</p> <p>2 to look into this incident to try to determine what 11:42:47</p> <p>3 had happened? 11:42:49</p> <p>4 A. Yes, I did. 11:42:50</p> <p>5 Q. And did you do that as part of your duties at 11:42:50</p> <p>6 DeSoto? 11:42:52</p> <p>7 A. Yes, I did. 11:42:53</p> <p>8 Q. And did you speak with May Vokaty who was the 11:42:53</p> <p>9 tech in charge of the equipment at the time? 11:42:57</p> <p>10 A. Yes, I did. 11:42:58</p> <p>11 Q. Okay. And did you obtain from her the 11:42:59</p> <p>12 information that you just recited to us as to the 11:43:02</p> <p>13 patient positioning and restraint? 11:43:04</p> <p>14 A. Yes, I did. 11:43:06</p> <p>15 Q. Okay. Very good. 11:43:08</p> <p>16 You say that this patient had a frozen 11:43:10</p> <p>17 shoulder on the left side; is that right? 11:43:14</p> <p>18 A. That's a loose term. But arthritic shoulder, 11:43:18</p> <p>19 frozen shoulder, unable to lift it above her head in 11:43:22</p> <p>20 any nonrestrictive manner. 11:43:24</p> <p>21 Q. And was it the left arm of the patient that 11:43:26</p> <p>22 came in contact with the camera? 11:43:28</p> <p>23 A. I believe it was. 11:43:30</p> <p>24 Q. Okay. Now, you said that the robo contour was 11:43:34</p> <p>25 on; is that right? 11:43:37</p> <p>395</p> <p>1 A. I'm not sure. 11:43:40</p> <p>2 Q. Again though, that's what you learned from 11:43:41</p> <p>3 your investigation? 11:43:43</p> <p>4 A. My understanding is that the robo contour was 11:43:44</p> <p>5 on. 11:43:47</p>	Lack of personal knowledge. Speculation.

6 Q. Okay. And are you aware that the robo contour 11:43:48
7 is designed so that there's a certain distance at each 11:43:52
8 end where it is not sensitive in order to allow scans 11:43:57
9 to be conducted properly? 11:44:02
10 A. Not until that incident occurred. 11:44:03
11 Q. You didn't know that until then? 11:44:05
12 A. No, sir. 11:44:06
13 Q. Okay. And, again, is it fair to say you're 11:44:08
14 not a nuclear medicine expert? 11:44:10
15 A. Absolutely. 11:44:12
16 Q. And was Dr. Carvel a nuclear medicine expert 11:44:13
17 when you bought the nuclear camera? 11:44:16
18 A. No, sir. 11:44:17
19 Q. How do you know that? 11:44:17
20 MR. TATE: Objection, as to what expert 11:44:23
21 means in the context of the question. 11:44:24
22 A. I don't know for a fact that she was not an 11:44:28
23 expert, other than the fact that neither one of us 11:44:30
24 seemed to have any great knowledge about nuke. 11:44:33
25 Q. Now, Ms. Vokaty was operating the camera at 11:44:37

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1 the time of this incident, correct? 11:44:40
2 A. Yes, she was. 11:44:41
3 Q. And do you recall that this incident was in 11:44:42
4 maybe about the third week in July? 11:44:45
5 A. I don't recall the time frame. 11:44:49
6 Q. Okay. If I told you it was in the latter part 11:44:52
7 of July, would you have -- July 2001, would you have 11:44:54
8 any reason to doubt that? 11:44:59
9 A. If I -- 11:45:01
10 MR. TATE: Objection. Lack of personal 11:45:02
11 knowledge, asked and answered. 11:45:03
12 A. My answer in the report reflects that, yes, I 11:45:05
13 would agree. 11:45:08
14 Q. Okay. And are you aware that Ms. Vokaty 11:45:09
15 didn't begin to be trained on the nuclear camera until 11:45:12
16 earlier in July? 11:45:16
17 A. Yes, I am. 11:45:18
18 Q. Okay. And do you know who attempted to train 11:45:19
19 her? 11:45:22
20 MR. TATE: Objection. As far as the 11:45:23
21 characterization of the question attempted, I think 11:45:25
22 that's inappropriate. 11:45:27
23 A. Dr. Carvel was in -- in attendance for that 11:45:31
24 training session. 11:45:35

		<p>25 Q. You say she was in attendance. Was she 11:45:36</p> <p>397</p> <p>1 training? 11:45:39</p> <p>2 A. She was training, yes. 11:45:39</p> <p>3 Q. Okay. And you say "that training session." 11:45:42</p> <p>4 What do you mean by "that training session"? 11:45:44</p> <p>5 A. There were several -- May just wasn't thrown 11:45:49</p> <p>6 in there and trained one day. She was trained on 11:45:53</p> <p>7 several days of scanning. 11:45:57</p> <p>8 Q. How was she trained? 11:45:59</p> <p>9 A. Again, by Dr. Carvel and with some support by 11:46:01</p> <p>10 online applications, and eventually by -- if I -- I 11:46:10</p> <p>11 can't recall these dates, but we have a contract 11:46:16</p> <p>12 employee that would come in and do some contract apps 11:46:20</p> <p>13 for us. 11:46:23</p> <p>14 Q. And if Ms. Vokaty testified that her training 11:46:24</p> <p>15 took place through July and August, would you disagree 11:46:28</p> <p>16 with that? 11:46:30</p> <p>17 A. I would not disagree. 11:46:32</p>	
398 to 401	4 14	<p>398</p> <p>4 Q. (BY MR. CHESNEY) Is it correct from your 11:46:52</p> <p>5 recollection, Mr. King, that Ms. Vokaty had not been 11:46:53</p> <p>6 fully trained on the nuclear camera at the time of the 11:46:56</p> <p>7 incident we've been talking about? 11:47:00</p> <p>8 MR. TATE: Objection, as -- as far as the 11:47:02</p> <p>9 meaning of "fully trained." I think it's 11:47:04</p> <p>10 inappropriate. 11:47:06</p> <p>11 A. I don't believe she had adequate training at 11:47:10</p> <p>12 that time. 11:47:13</p> <p>13 Q. Fair enough. 11:47:14</p> <p>14 Did you ever have any experience 11:47:19</p> <p>15 personally with Dr. Carvel's operation of the nuclear 11:47:21</p> <p>16 camera? 11:47:23</p> <p>17 A. Other than her troubleshooting it, no. 11:47:30</p> <p>18 Q. Did she ever try to do any scan of you on the 11:47:33</p> <p>19 nuclear camera? 11:47:36</p> <p>20 A. No, she did not. 11:47:39</p> <p>21 Q. Is scan an appropriate term, by the way? 11:47:42</p> <p>22 A. That is. 11:47:44</p> <p>23 Q. Did she ever try to perform a procedure on you 11:47:46</p> <p>24 on the nuclear camera? 11:47:50</p> <p>25 A. She gave the order for the technologist to 11:47:51</p> <p>399</p> <p>1 perform that procedure on me. 11:47:53</p>	Speculation. Hearsay.

2 Q. Okay. Which technologist? Was it May Vokaty? 11:47:56
3 A. I don't -- I don't believe -- it may have been 11:48:03
4 May, but we had a couple other folks we were training 11:48:05
5 in that area at the time. Pam Curry and -- I don't 11:48:08
6 know. Cindy Holmes might have been there at that 11:48:16
7 time. 11:48:21
8 Q. Okay. And was Dr. Carvel instructing these 11:48:25
9 people as to how to perform the procedure on you? 11:48:29
10 MR. TATE: Objection, as far as the term of 11:48:33
11 "instructing" and the meaning of instructing. 11:48:35
12 MR. CHESNEY: Fair enough. I'll withdraw 11:48:38
13 it. 11:48:40
14 Q. (BY MR. CHESNEY) What was Dr. Carvel's 11:48:40
15 participation in this procedure? 11:48:41
16 A. She gave the type of procedure to be performed 11:48:46
17 on me. She gave that order for that type of 11:48:58
18 procedure. 11:49:01
19 Q. Did she show the tech anything about how to 11:49:01
20 position you on the table or to position you for the 11:49:03
21 procedure or anything like that? 11:49:06
22 A. Second phase of it, yes. There are two 11:49:07
23 phases. 11:49:11
24 Q. Okay. And is it correct that that second 11:49:11
25 phase of the procedure did not turn out properly? 11:49:15

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1 MR. TATE: Objection. Assuming facts not 11:49:18
2 in evidence. 11:49:20
3 A. Each radiologist has their own parameter of 11:49:23
4 what's appropriate for them to do an interpretation 11:49:26
5 off of. My limited amount of information or knowledge 11:49:28
6 of nuke med led me to believe from other nuke techs 11:49:38
7 that that was -- was an inappropriate exam, that I 11:49:44
8 should have been in the same position for both exams. 11:49:50
9 Q. So in speaking with knowledgeable nuclear 11:49:51
10 medicine technologists, you were led to understand 11:49:54
11 that you had been improperly positioned for one part 11:49:57
12 of the exam; is that correct? 11:49:59
13 A. I was led to believe that some radiologists 11:50:01
14 have a different method of interpretation, if they're 11:50:05
15 comfortable with that, that's their prerogative to use 11:50:12
16 that method. 11:50:14
17 Q. And that was different from the one that 11:50:14
18 Dr. Carvel for -- that instructed the tech to use for 11:50:17
19 you, correct? 11:50:20
20 A. Yes, it was. 11:50:21

		<p>21 Q. Okay. And these were experienced nuclear 11:50:22</p> <p>22 medicine techs who were telling you about this 11:50:24</p> <p>23 different -- 11:50:27</p> <p>24 A. Yes, it was. 11:50:27</p> <p>25 Q. -- position? Okay. 11:50:28</p> <p>401</p> <p>1 Let's talk a bit about the Excelart -- 11:50:29</p> <p>2 A. Okay. 11:50:55</p> <p>3 Q. -- MR. 11:50:56</p> <p>4 As I recall your testimony when you were 11:51:01</p> <p>5 speaking with Mr. Tate yesterday, I think you said 11:51:04</p> <p>6 that other than some focused items, I think that was 11:51:09</p> <p>7 the term that you used, Toshiba was able to resolve 11:51:12</p> <p>8 issues that arose concerning the Excelart? 11:51:16</p> <p>9 MR. TATE: Objection. That 11:51:18</p> <p>10 mischaracterizes the witness's previous testimony. 11:51:19</p> <p>11 Q. (BY MR. CHESNEY) Is that a fair statement of 11:51:21</p> <p>12 your view of things as it related to the Excelart? 11:51:23</p> <p>13 A. With the exception of a few very critical 11:51:27</p> <p>14 problems, yes. 11:51:31</p>	
410 to 411	22 8	<p>410</p> <p>22 Q. Okay. So if I understand you, there were one 12:02:12</p> <p>23 or two issues where there were white dots in head 12:02:14</p> <p>24 studies, but that you believe was relating to the 12:02:18</p> <p>25 positioning of the patient? 12:02:21</p> <p>411</p> <p>1 A. I think that was positioning of the patient, 12:02:21</p> <p>2 yes. 12:02:23</p> <p>3 Q. Fair enough. 12:02:24</p> <p>4 So the ones that you couldn't fully 12:02:24</p> <p>5 attribute -- or couldn't attribute necessarily to the 12:02:27</p> <p>6 position of the patient were all lumbar spine studies; 12:02:27</p> <p>7 is that right? 12:02:30</p> <p>8 A. They were all spine studies. 12:02:30</p>	Speculation. Lack of personal knowledge.
414 to 415	10 2	<p>414</p> <p>10 Q. Are you saying you opened up the field of view 12:06:15</p> <p>11 to larger than the spine, in part, in order to make 12:06:17</p> <p>12 sure that you maintained good image quality? 12:06:21</p> <p>13 A. That's correct. 12:06:23</p> <p>14 Q. Okay. Is it also correct that the white dot 12:06:24</p> <p>15 artifact didn't appear in the image on the spine? 12:06:27</p> <p>16 MR. TATE: Objection. Mischaracterization 12:06:31</p> <p>17 of his testimony. 12:06:33</p> <p>18 A. That is correct. It would not appear in the 12:06:34</p>	FRE 106 competence.

		<p>19 actual bony structure itself, unless the patient was 12:06:36</p> <p>20 malpositioned. If a patient was positioned off 12:06:39</p> <p>21 center, which we use the belly button as a center 12:06:44</p> <p>22 point and the xyphoid tip as the center point, if the 12:06:47</p> <p>23 center line didn't strike those two points, which is 12:06:50</p> <p>24 the center of your breast plate and your belly button, 12:06:52</p> <p>25 and they -- for some reason it scooted over, at that 12:06:55</p> <p style="text-align: center;">415</p> <p>1 point it was in jeopardy of having a white dot 12:06:59</p> <p>2 artifact occur. 12:07:01</p>	
417 to 418	25 23	<p style="text-align: center;">417</p> <p>25 Q. Okay. Now, my question really relates to who 12:10:21</p> <p style="text-align: center;">418</p> <p>1 it was, if you recall, who told you that you weren't 12:10:26</p> <p>2 seeing it and can you recall -- 12:10:29</p> <p>3 A. I don't recall -- 12:10:31</p> <p>4 Q. -- who that was? 12:10:32</p> <p>5 A. -- who that was. 12:10:33</p> <p>6 Q. Okay. Is it not fair to say, Mr. King, that 12:10:34</p> <p>7 actually what you were told by Toshiba applications 12:10:37</p> <p>8 people was that they were not able to replicate it and 12:10:40</p> <p>9 see it for themselves? 12:10:44</p> <p>10 A. That is correct. 12:10:46</p> <p>11 Q. Okay. And did you not then send to Toshiba 12:10:47</p> <p>12 some images that you believed contained this white dot 12:10:51</p> <p>13 artifact? 12:10:54</p> <p>14 A. I didn't send those. The FE pulled those down 12:10:55</p> <p>15 on MOD and sent them. 12:10:58</p> <p>16 Q. The "FE" meaning the field engineer? 12:10:59</p> <p>17 A. Field engineer. 12:11:02</p> <p>18 Q. And who was that? 12:11:02</p> <p>19 A. I can't recall who that was. 12:11:03</p> <p>20 Q. Okay. And was Toshiba then able to see what 12:11:05</p> <p>21 it was that you were talking about? 12:11:08</p> <p>22 A. They saw it on my images. 12:11:12</p> <p>23 Q. Right. 12:11:13</p>	Vague. FRE 106 competence.
419 to 420	20 13	<p style="text-align: center;">419</p> <p>20 Q. Am I correct also that there was a point at 12:12:05</p> <p>21 which you say there was a good fix to the white dot 12:12:09</p> <p>22 artifact involving a change of the coil that you 12:12:13</p> <p>23 used -- 12:12:14</p> <p>24 MR. TATE: Objection. Mischaracterizes -- 12:12:14</p> <p>25 Q. (BY MR. CHESNEY) -- do you recall that? 12:12:16</p>	

		<p style="text-align: center;">420</p> <p>1 MR. TATE: -- the witness's testimony. 12:12:16</p> <p>2 A. That is correct. 12:12:18</p> <p>3 Q. And what was the change of the coil? 12:12:19</p> <p>4 A. The coil was to put in what they called a QD 12:12:23</p> <p>5 coil. QD coil's -- only purpose for that QD coil was 12:12:27</p> <p>6 the lumbar and thoracics. The reason we had the CTL 12:12:33</p> <p>7 coil is because the patient never had to be moved from 12:12:37</p> <p>8 that coil, they could have their cervical, thoracic, 12:12:39</p> <p>9 and lumbar scanned. When we got the QD coil put in 12:12:43</p> <p>10 place, when we had a lumbar and/or a thoracic and a 12:12:46</p> <p>11 cervical, we had to get the patient completely up off 12:12:50</p> <p>12 the table, put them back down, and do the cervical on 12:12:53</p> <p>13 a different coil altogether. 12:12:56</p>	
430 to 431	8 25	<p style="text-align: center;">430</p> <p>8 Q. And just to kind of orient us and the 13:09:51</p> <p>9 transcript, could you tell us just briefly again what 13:09:54</p> <p>10 exactly is a prescan failure, as simply as you could 13:09:57</p> <p>11 describe it for somebody like me who doesn't know? 13:10:00</p> <p>12 A. Prescan failure is like turning a crank -- 13:10:03</p> <p>13 trying to crank up your car and it turns over and over 13:10:05</p> <p>14 and over and never actually cranks up, so the engine 13:10:08</p> <p>15 is never running. 13:10:13</p> <p>16 Q. And in the context of an MR machine, what 13:10:19</p> <p>17 exactly happens and, equally importantly, what doesn't 13:10:24</p> <p>18 happen that you want to happen? 13:10:29</p> <p>19 A. In the MR bore itself, the patient is 13:10:30</p> <p>20 inserted. Once the patient is inserted, their 13:10:35</p> <p>21 demographic information is put into the computer, the 13:10:37</p> <p>22 weight of the patient, which is -- has to be very, 13:10:40</p> <p>23 very precise, and then the system is asked to start 13:10:45</p> <p>24 its prescan. Prescanning is the exactation of the 13:10:50</p> <p>25 atoms within that isocenter field and asking to 13:10:53</p> <p style="text-align: center;">431</p> <p>1 receive back a certain amount of information before it 13:10:57</p> <p>2 can go forward and start to scan. 13:11:02</p> <p>3 Q. What kind of information is the machine 13:11:04</p> <p>4 seeking? 13:11:06</p> <p>5 A. It's seeking hydrogen atom information, 13:11:08</p> <p>6 precessing atoms in large volumes. 13:11:13</p> <p>7 Q. You say precessing or processing? 13:11:18</p> <p>8 A. Precessing. 13:11:20</p> <p>9 Q. Precessing? 13:11:21</p> <p>10 A. Spinning around. 13:11:22</p> <p>11 Q. And you had said yesterday, I believe, that 13:11:34</p>	FRE 106 competence.

		<p>12 you think it's important for MR techs to be trained in 13:11:36</p> <p>13 doing manual scans as opposed to always relying on 13:11:39</p> <p>14 auto scanning -- auto prescanning; is that correct? 13:11:43</p> <p>15 A. That is correct. 13:11:46</p> <p>16 Q. And why do you believe that's important? 13:11:47</p> <p>17 A. With the auto prescan cycle, you can have a 13:11:49</p> <p>18 patient say, for instance, who is -- is dehydrated, 13:11:53</p> <p>19 the hydrogen atom content is probably looser than 13:11:58</p> <p>20 normal, not as many there. Out of the billions that 13:12:04</p> <p>21 you have, maybe it's only one billion of those, and it 13:12:08</p> <p>22 just has got no signal coming back. At that point, 13:12:11</p> <p>23 once -- once you start to procedure and the -- the 13:12:15</p> <p>24 auto prescan doesn't scan itself, you can go into 13:12:18</p> <p>25 manual and try to adjust for that body habitus. 13:12:22</p>	
435 to 438	9 8	<p style="text-align: center;">435</p> <p>9 Q. Okay. Now, I think you answered this question 13:16:41</p> <p>10 yesterday, but I just want to make sure it's on the 13:16:43</p> <p>11 record, and so I'm going to try to point to what I 13:16:46</p> <p>12 think you said and correct me if it's wrong. 13:16:48</p> <p>13 A. Okay. 13:16:51</p> <p>14 Q. Am I correct that it would take about three or 13:16:51</p> <p>15 four minutes to do a manual scan if the automatic 13:16:54</p> <p>16 prescan failed? 13:16:58</p> <p>17 A. Approximately about three to four minutes, 13:16:58</p> <p>18 yes. 13:17:00</p> <p>19 Q. Okay. Now, you talked about some of the 13:17:05</p> <p>20 things that could cause a prescan failure being 13:17:07</p> <p>21 patient habitus and so forth? 13:17:11</p> <p>22 A. Right. 13:17:12</p> <p>23 Q. Could bad coil connections also do that? 13:17:13</p> <p>24 A. They can. They could. 13:17:15</p> <p>25 Q. Would having a drift in your center frequency 13:17:18</p> <p style="text-align: center;">436</p> <p>1 do that? 13:17:21</p> <p>2 A. That's what the manual prescan's all about, to 13:17:22</p> <p>3 pull that frequency back in line. 13:17:26</p> <p>4 Q. Okay. And do you have any sense, to the 13:17:29</p> <p>5 extent DeSoto experienced prescan failures, as to the 13:17:37</p> <p>6 number of those prescan failures total? 13:17:43</p> <p>7 A. I can't tell you how many there were. I know 13:17:48</p> <p>8 there were numerous scan failures. 13:17:50</p> <p>9 Q. I take it they would have been reported to 13:17:54</p> <p>10 Toshiba? 13:17:56</p> <p>11 A. Yes, they would have been. 13:17:56</p> <p>12 Q. Okay. Do you have any -- would you have any 13:18:00</p>	

13 ability to quantify the causes of those prescan 13:18:03
 14 failures? 13:18:09
 15 MR. TATE: Objection. 13:18:10
 16 Q. (BY MR. CHESNEY) For example, the total 13:18:10
 17 number of failures you had would be a hundred percent. 13:18:12
 18 Could you assign percentages to those failures for any 13:18:16
 19 particular cause? 13:18:21
 20 MR. TATE: Objection. Calls for an expert 13:18:22
 21 opinion. 13:18:24
 22 Q. (BY MR. CHESNEY) Yeah. If you can, that's 13:18:25
 23 fine. I'm not asking you for stuff you can't do. 13:18:26
 24 A. There's only one real defined reason that we 13:18:29
 25 were given by some of the engineers, and that was in 13:18:32

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1 Toshiba's coil configuration the adapter tail or the 13:18:36
 2 connector piece to the magnet board itself had 15 pins 13:18:41
 3 in it. And pins are just the like on the back of your 13:18:46
 4 computer and they're usually nine pin, ten pin, 13:18:51
 5 fifteen pin. These are 15 pins. A couple of those 13:18:54
 6 pins had -- had been pushed in and possibly dislodged 13:18:57
 7 from the wiring mechanism there or corroded over, not 13:19:04
 8 forming a good contact inside the -- the female 13:19:10
 9 connector piece. 13:19:14
 10 So if I had to quantify that, I would say 13:19:16
 11 that's probably 70 percent of the reasons for the 13:19:20
 12 prescan failure. 13:19:23
 13 Q. Fair enough. 13:19:23
 14 And was that fixed once these pins were 13:19:25
 15 replaced? 13:19:28
 16 A. Once it was identified as that. I had a 13:19:29
 17 tendency myself of showing the techs they could go in 13:19:31
 18 and actually it's like raising a hood up on the 13:19:34
 19 engine, looking at it really hard and shutting the 13:19:37
 20 hood and it cranks up for you. But I would blow on 13:19:39
 21 the connector pieces, because it had a tendency to 13:19:45
 22 coat them with some -- some little bit of moisture or 13:19:45
 23 whatever the -- whatever it was coating, and then it 13:19:49
 24 would function after that. But the pins were so 13:19:49
 25 destroyed at that point, that you had to really do a 13:19:54

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1 hard physical connection. And if they did that 13:19:56
 2 physical connection appropriately, they could usually 13:20:00
 3 scan. But it was -- it was more exertion in 13:20:02
 4 footpounds than needed for the brittle piece of 13:20:07

		<p>5 equipment. Very brittle. 13:20:10</p> <p>6 Q. And so the pins, I take it, were replaced? 13:20:12</p> <p>7 A. The pins were replaced and so were the 13:20:14</p> <p>8 receiver connectors. 13:20:17</p>	
439 to 441	22 6	<p>439</p> <p>22 Q. Is it true that if there is variation in the 13:22:22</p> <p>23 power that's coming into a facility from the power 13:22:27</p> <p>24 company that could cause RM errors? 13:22:29</p> <p>25 A. Power can -- can certainly be an enhancer of 13:22:31</p> <p>440</p> <p>1 that RM error. 13:22:34</p> <p>2 Q. And is it fair to say that the power supply in 13:22:35</p> <p>3 Olive Branch was not good? 13:22:39</p> <p>4 MR. TATE: Objection. Asking the witness 13:22:40</p> <p>5 to speculate, lack of personal knowledge, assumes 13:22:43</p> <p>6 facts not in evidence. 13:22:45</p> <p>7 A. My experience with the electrical company 13:22:47</p> <p>8 there was that the population had outgrown their 13:22:51</p> <p>9 ability to supply pure power. 13:22:55</p> <p>10 Q. And, in fact, you had some discussions with 13:22:57</p> <p>11 that electrical company concerning that, did you not? 13:22:59</p> <p>12 A. Yes, we did. 13:23:02</p> <p>13 Q. And was that because of some concerns that 13:23:03</p> <p>14 DeSoto had about the power that was being supplied to 13:23:05</p> <p>15 the facility? 13:23:07</p> <p>16 A. Yes, it was. 13:23:08</p> <p>17 Q. Okay. Is it also true, Mr. King, that the RM 13:23:08</p> <p>18 errors tended to appear most frequently at particular 13:23:11</p> <p>19 times of the day? 13:23:13</p> <p>20 A. It was a real sporadic occurrence of the RM 13:23:19</p> <p>21 error, but they did seem to present themselves about 3 13:23:23</p> <p>22 or 4 o'clock in the evening more than -- than the 13:23:29</p> <p>23 morning hours. 13:23:31</p> <p>24 Q. Okay. And was that coincident with any peak 13:23:33</p> <p>25 usage in the area of the power, as you understood it? 13:23:37</p> <p>441</p> <p>1 MR. TATE: Objection. Lack of personal 13:23:40</p> <p>2 knowledge, asking the witness to speculate. 13:23:42</p> <p>3 A. It's my understanding from the power company 13:23:43</p> <p>4 that they felt like they had a high usage factor 13:23:46</p> <p>5 around that time, due to the population in that 13:23:49</p> <p>6 service area. 13:23:55</p>	Lack of personal knowledge. Speculation. Lack of foundation. Hearsay.
443 to	12	<p>443</p> <p>12 Q. Were these RM errors intermittent and sporadic 13:26:43</p>	Speculation.

445	20	13 in nature? 13:26:46	
		14 MR. TATE: Object to the form of the 13:26:48	
		15 question. Assumes facts not in evidence. 13:26:49	
		16 A. For a period of about a week or so, they 13:26:52	
		17 were -- they were everyday occurrence. They started 13:26:58	
		18 sporadic. Then for about a week, they occurred on a 13:27:07	
		19 daily basis. We addressed the issue. And some of the 13:27:11	
		20 boards reseated and then they went sporadic again. So 13:27:19	
		21 over about a two-week frame, yeah, we had sporadic on 13:27:23	
		22 the first side, a week of continuous, and then another 13:27:26	
		23 sporadic run of those. 13:27:30	
		24 Q. You say another sporadic run. For how long? 13:27:33	
		25 A. Probably about three or four days. 13:27:36	
		444	
		1 Q. Okay. And then what? 13:27:38	
		2 A. It just -- it kind of just ended. 13:27:39	
		3 Q. Okay. So was this -- was this one continuous 13:27:42	
		4 period of time you're talking about, incidentally? 13:27:46	
		5 A. One continuous. 13:27:48	
		6 Q. Well, forgive me. I'll back up. 13:27:50	
		7 I think you said there was roughly a week 13:27:52	
		8 when they were fairly frequent, then there was a 13:27:55	
		9 period when they were sporadic, then I think there was 13:28:01	
		10 a fix made then that was somewhat more sporadic and 13:28:05	
		11 then they disappeared, is that generally right? 13:28:08	
		12 MR. TATE: Object. Object to the form of 13:28:11	
		13 the question. 13:28:13	
		14 MR. CHESNEY: Fair enough. 13:28:14	
		15 MR. TATE: Mischaracterizes the witness's 13:28:15	
		16 testimony. 13:28:17	
		17 Q. (BY MR. CHESNEY) Why don't you characterize 13:28:17	
		18 the time frame of the RM errors what you were 13:28:19	
		19 experiencing? 13:28:21	
		20 A. I'm really not very clear on the time frame. 13:28:21	
		21 Q. Just the best you can give us. 13:28:24	
		22 MR. TATE: I think the witness has answered 13:28:25	
		23 he's not clear on the time frame, so . . . 13:28:26	
		24 A. When you're having that kind of error occur, 13:28:28	
		25 it seemed like a lifetime because, again, my practice 13:28:31	
		445	
		1 was to take care of the patient and also to produce a 13:28:35	
		2 procedure for the facility. 13:28:39	
		3 Q. Okay. It seemed longer than it was because of 13:28:42	
		4 that? 13:28:44	

		<p>5 MR. TATE: Object. 13:28:44</p> <p>6 Q. (BY MR. CHESNEY) Is that fair to say? 13:28:45</p> <p>7 MR. TATE: Objection. Mischaracterizes the 13:28:47</p> <p>8 witness's testimony. 13:28:48</p> <p>9 MR. CHESNEY: Well, actually, fair enough. 13:28:49</p> <p>10 Let me ask you this way. 13:28:50</p> <p>11 Q. (BY MR. CHESNEY) Did the RM errors actually 13:28:52</p> <p>12 last for a lifetime, Mr. King? 13:28:53</p> <p>13 MR. TATE: Object to the form of the 13:28:55</p> <p>14 question, as far as the lifetime. Does anything last 13:28:56</p> <p>15 for a lifetime, Mr. Chesney? 13:28:59</p> <p>16 A. No, it didn't last a lifetime. 13:29:03</p> <p>17 Q. Okay. How long did it last? 13:29:06</p> <p>18 A. I would say a couple weeks or -- 13:29:07</p> <p>19 Q. Okay. 13:29:11</p> <p>20 A. Give or take a couple of weeks. 13:29:12</p>	
474 to 476	13 2	<p>474</p> <p>13 Q. (BY MR. CHESNEY) Mr. King, we were talking 14:24:31</p> <p>14 about this image degradation late in 2001 issue -- 14:24:33</p> <p>15 A. Yes, sir. 14:24:38</p> <p>16 Q. -- that was one of the things related to the 14:24:38</p> <p>17 MR. 14:24:40</p> <p>18 I think you said that when you did your 14:24:47</p> <p>19 Q and As on a daily basis with the phantom -- 14:24:52</p> <p>20 A. Yes. 14:24:56</p> <p>21 Q. -- you were getting acceptable results; is 14:24:56</p> <p>22 that correct? 14:24:58</p> <p>23 A. They seemed to be acceptable. On occasion 14:24:58</p> <p>24 they would elevate a little bit. 14:25:01</p> <p>25 Q. Okay. Elevate, meaning the number would get 14:25:02</p> <p>475</p> <p>1 higher than 60, up to about 72 or something? 14:25:05</p> <p>2 A. Yeah. I can't remember the exact numbers, but 14:25:08</p> <p>3 if I -- we were looking back at those files, they were 14:25:11</p> <p>4 60 or so was an appropriate number. 14:25:13</p> <p>5 Q. A lower number is better in this regard; is 14:25:16</p> <p>6 that right? 14:25:20</p> <p>7 A. To a point. You know, I don't think you can 14:25:21</p> <p>8 get perfect, you know, zero. You can get 30s and 14:25:23</p> <p>9 lower decimals. 14:25:28</p> <p>10 Q. But my only point is, 60 is pretty good, from 14:25:31</p> <p>11 what you're telling me? 14:25:35</p> <p>12 A. It seemed to be the average for them, yes. 14:25:36</p> <p>13 Q. Seventy-two is less good? 14:25:38</p> <p>14 A. It's less. 14:25:40</p>	Speculation.

		<p>15 Q. Fifty would be better than sixty; is that 14:25:40</p> <p>16 right? 14:25:42</p> <p>17 A. That is correct. 14:25:43</p> <p>18 Q. That's the reason why I was asking. 14:25:43</p> <p>19 Okay. And what do these numbers mean, 50, 14:25:45</p> <p>20 60, 72, whatever they would be? 14:25:49</p> <p>21 A. Those are numbers that are described by each 14:25:51</p> <p>22 vendor, each vendor's piece of equipment for 14:25:53</p> <p>23 acceptable noise limits within the system. So 14:25:56</p> <p>24 Toshiba's may be different from GE's, and GE's may be 14:26:00</p> <p>25 different from Philips, but what's acceptable physics- 14:26:04</p> <p>476</p> <p>1 wise in their piece of equipment for obtaining the 14:26:07</p> <p>2 proper image data. 14:26:11</p>	
477 to 481	12 8	<p>477</p> <p>12 Q. Okay. When you did your Q and As, am I 14:27:55</p> <p>13 correct that you did these on a daily basis? 14:27:57</p> <p>14 A. Yes, we did. 14:27:59</p> <p>15 Q. And one reason was to get the proper centering 14:28:00</p> <p>16 frequency? 14:28:03</p> <p>17 A. That's correct. 14:28:03</p> <p>18 Q. And another reason was to make sure that you 14:28:04</p> <p>19 were achieving proper signal? 14:28:06</p> <p>20 A. That's correct as well. The third reason 14:28:11</p> <p>21 was -- 14:28:14</p> <p>22 Q. I was getting to that. 14:28:14</p> <p>23 Was another reason to make sure the 14:28:17</p> <p>24 signal-to-noise ratio was acceptable? 14:28:19</p> <p>25 A. That's correct. 14:28:21</p> <p>478</p> <p>1 Q. Okay. And was there another reason? 14:28:22</p> <p>2 A. There was another underlying reason. 14:28:23</p> <p>3 Q. Which was? 14:28:25</p> <p>4 A. All magnets in the country, you try to get 14:28:27</p> <p>5 them certified through the American College of 14:28:31</p> <p>6 Radiography. And if you can show continuous records 14:28:35</p> <p>7 of quality assurance where you've run daily 14:28:38</p> <p>8 frequencies and they're at acceptable levels, then you 14:28:41</p> <p>9 can present yourself for certification to the American 14:28:45</p> <p>10 College of Radiography. And that -- that gives you 14:28:49</p> <p>11 the same certification as mammography has, which is 14:28:52</p> <p>12 a -- kind of a marketing strategy. 14:28:55</p> <p>13 Q. And do you have any understanding as to what 14:29:03</p> <p>14 results you would have to show from these Q and As to 14:29:08</p>	Relevance under FRE 401, 402, & 403. Speculation.

15 achieve certification for the MR equipment? 14:29:11
 16 A. Continuous -- 90 percent continuous signal 14:29:14
 17 noise levels within acceptable limits described by the 14:29:17
 18 ACR. We don't do that in my facility currently. But 14:29:20
 19 we were trying to achieve something greater at that 14:29:27
 20 standard, something that only one or two sites in 14:29:31
 21 Memphis had. 14:29:33
 22 Q. Which was this certification by the American 14:29:35
 23 College of Radiography? 14:29:37
 24 A. That is correct. 14:29:39
 25 Q. And the American College of Radiography 14:29:39

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1 employs, as you understand it, a standard based upon 14:29:43
 2 the Q and A results that you're able to obtain -- 14:29:46
 3 A. Yes. 14:29:49
 4 Q. -- over a period of time with your equipment? 14:29:49
 5 A. They look at that as one of their factors. 14:29:53
 6 Q. Are you aware of what other factors they look 14:29:59
 7 at? 14:30:02
 8 A. The other factors are their own imposed 14:30:02
 9 factors, where they require you to purchase another 14:30:06
 10 device from them and scan that one for about three 14:30:10
 11 months, and then you show the numbers or procedures 14:30:13
 12 you do, and that in relation to the -- your own 14:30:16
 13 phantom and the phantom device that they require to be 14:30:24
 14 scanned, all those three components are -- are -- are 14:30:30
 15 a part of that certification process. 14:30:34
 16 Q. I'm not sure I got the three. 14:30:38
 17 One is the Q and As that you do on a 14:30:39
 18 regular basis, correct? 14:30:42
 19 A. We have to show a track record there. 14:30:43
 20 Q. And that's -- that's with your own phantom or 14:30:44
 21 with the manufacturer's phantom? 14:30:47
 22 A. That was the -- we start out by -- we have to 14:30:49
 23 show that we have kept a consistent record. 14:30:51
 24 Q. Okay. And then is the second one using an ACR 14:30:54
 25 phantom, is that what I understand? 14:30:59

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1 A. You can buy the phantom -- 14:31:00
 2 Q. Okay. 14:31:02
 3 A. -- from a -- there's only one source in the 14:31:02
 4 United States that sells that particular item and you 14:31:04
 5 have to buy it through that source. And then they 14:31:06
 6 give you prerequisites for scanning that phantom and 14:31:09

		<p>7 then you submit your data. 14:31:12</p> <p>8 Q. Nice little monopoly to have. 14:31:13</p> <p>9 A. Very much. 14:31:16</p> <p>10 Q. I don't think I fully understood the third 14:31:19</p> <p>11 factor that you mentioned. So could you just tell us 14:31:21</p> <p>12 again? 14:31:24</p> <p>13 A. What was the third factor? 14:31:25</p> <p>14 Q. I think -- for certification I thought it had 14:31:26</p> <p>15 something to do with the number of scans you did or 14:31:28</p> <p>16 something. 14:31:30</p> <p>17 A. The number and type of patients that you do. 14:31:30</p> <p>18 That's -- that -- that also plays a part for -- if 14:31:33</p> <p>19 you're trying a new technologist, they've got to be 14:31:38</p> <p>20 trained on X type -- X number of head procedures, X 14:31:41</p> <p>21 number of back procedures, X number of knees. So the 14:31:44</p> <p>22 only way that -- that the newer technologist can get 14:31:48</p> <p>23 certified in that registry is to prove that they've 14:31:51</p> <p>24 scanned those. And ACR requires some -- some listing 14:31:54</p> <p>25 of that data as well to show that that machine can 14:31:58</p> <p>481</p> <p>1 scan backs and can scan heads and can scan joints. 14:32:00</p> <p>2 Q. And are you aware of whether the ACR requires, 14:32:05</p> <p>3 in order to certify a facility in a particular 14:32:10</p> <p>4 specialty, that the facility also have certain 14:32:14</p> <p>5 practices and policies that it follows with regard to 14:32:16</p> <p>6 its internal operating guidelines? 14:32:19</p> <p>7 A. I have no clue. 14:32:22</p> <p>8 Q. Okay. Then I won't ask you. 14:32:26</p>	
499 to 501	16 2	<p>499</p> <p>16 Q. Now, did Mr. Johnson eventually prove 14:55:01</p> <p>17 successful in resolving these image degradation 14:55:06</p> <p>18 problems? 14:55:09</p> <p>19 MR. TATE: Object to the form, as far as 14:55:09</p> <p>20 the meaning of "proved successful." 14:55:11</p> <p>21 A. I believe this started on like Thursday with 14:55:13</p> <p>22 Jacobs present and Johnson. I think O'Barr might have 14:55:19</p> <p>23 been there too. But they worked through the weekend 14:55:21</p> <p>24 starting on Friday and Saturday and Sunday, my 14:55:34</p> <p>25 understanding. And on Monday we did have some 14:55:37</p> <p>500</p> <p>1 successful imaging without problem. 14:55:40</p> <p>2 Q. Okay. And was that in October or November? 14:55:47</p> <p>3 A. I don't recall. This is when Jacobs made his 14:55:50</p> <p>4 visit. And it's in the -- and I read that yesterday 14:55:57</p>	Vague. Speculation. FRE 106 competence.

		<p>5 as well. So I know it's in the service call because 14:55:59</p> <p>6 he was there reporting on his applications report. 14:56:03</p> <p>7 And in his report he did say it raised its ugly head 14:56:05</p> <p>8 on that day. And it did, and it wasn't -- wasn't 14:56:09</p> <p>9 motion. 14:56:13</p> <p>10 Q. I think he said it raised his little head 14:56:14</p> <p>11 perhaps; is that right? 14:56:17</p> <p>12 MR. TATE: I think he said ugly head. 14:56:17</p> <p>13 MR. CHESNEY: I think it was little. 14:56:19</p> <p>14 MR. TATE: On December 7th, I believe. 14:56:19</p> <p>15 MR. CHESNEY: Was it? 14:56:22</p> <p>16 Q. (BY MR. CHESNEY) In any event, that's in the 14:56:26</p> <p>17 report of Mr. Jacobs -- 14:56:26</p> <p>18 A. That's correct. 14:56:26</p> <p>19 Q. -- you were talking with Mr. Tate about 14:56:30</p> <p>20 yesterday; is that correct? 14:56:30</p> <p>21 A. Yes. That's correct. 14:56:30</p> <p>22 Q. Okay. That's fine. 14:56:30</p> <p>23 So Mr. Johnson and some other people 14:56:36</p> <p>24 worked over the weekend. And they, I take it, were 14:56:38</p> <p>25 able to resolve the issue that was manifested in the 14:56:41</p> <p>501</p> <p>1 form of an apparent movement; is that correct? 14:56:46</p> <p>2 A. That's correct. 14:56:49</p>	
503 to 505	8 19	<p>503</p> <p>8 Q. Did DeSoto experience a pretty high level of 15:12:12</p> <p>9 turnover of technologists, in your experience? 15:12:16</p> <p>10 MR. TATE: Object to the form of the 15:12:19</p> <p>11 question, as far as the meaning of "high level of 15:12:20</p> <p>12 turnover." 15:12:23</p> <p>13 A. We had a large number of turnover. 15:12:27</p> <p>14 Q. Do you have any knowledge or understanding as 15:12:35</p> <p>15 to why? 15:12:37</p> <p>16 MR. TATE: Objection. Speculation. 15:12:39</p> <p>17 A. An imaging center is a different place to 15:12:43</p> <p>18 work. If you've worked in a hospital, it's a lot 15:12:46</p> <p>19 faster paced, a lot more customer friendly, a lot more 15:12:49</p> <p>20 demands are put on you to meet certain criteria set by 15:12:56</p> <p>21 the -- by the institution. You have direct contact 15:13:00</p> <p>22 with your immediate supervisors. In this case we had 15:13:09</p> <p>23 the direct contact with the owners. So a more 15:13:14</p> <p>24 critical eye was put on the performance, and some 15:13:17</p> <p>25 technologists performed less efficiently under that 15:13:25</p> <p>504</p>	Vague. Relevance under FRE 401, 402, & 403. Speculation.

1 eye. 15:13:27
2 Q. Performed less efficiently, did you say? 15:13:30
3 A. That's correct. 15:13:33
4 Q. Why would they perform less efficiently? 15:13:34
5 A. Coming from facilities that govern over the 15:13:41
6 employee, you have a set -- a set of parameters that 15:13:47
7 you follow. And when you're given an opportunity to 15:13:49
8 think for yourself and don't know how to think for 15:13:54
9 yourself and, therefore, a little more hesitant about 15:13:58
10 performing an exam or acquiring the data you think 15:14:01
11 that you should be acquiring, then your efficiency 15:14:04
12 level goes down. 15:14:09
13 Personalities. Personalities is -- is a 15:14:13
14 little different from anyone else that I've ever met. 15:14:15
15 My personality is the same. So we had several 15:14:18
16 personalities in the upper management position that 15:14:23
17 had conflict at times with -- with folks, with the 15:14:26
18 employees. Our desire was to get the best, most 15:14:29
19 productive work out of each and every employee. 15:14:38
20 Q. Presumably that would be most people's wish in 15:14:44
21 employment situation, correct? 15:14:47
22 A. You would think. 15:14:48
23 Q. You would think. 15:14:48
24 Now, you said I think that one of the 15:14:50
25 issues was where people might be less confident about 15:14:55

505

1 making decisions -- 15:14:58
2 A. That's correct. 15:14:59
3 Q. -- on their own? 15:15:00
4 Wouldn't that be one of the reasons you 15:15:01
5 would want to have people registered in one specific 15:15:03
6 modality, because they would be more likely to be 15:15:06
7 confident? 15:15:08
8 MR. TATE: Objection. Assuming facts not 15:15:10
9 in evidence. 15:15:12
10 A. That is -- that was my intention by hiring 15:15:16
11 those -- those people into those spots, yes. 15:15:19
12 Q. Okay. And had you worked with those people 15:15:22
13 before? 15:15:24
14 A. No. I only worked with one. 15:15:29
15 Q. Which one? 15:15:30
16 A. Joanne Tucker. 15:15:31
17 Q. Okay. So you had never worked with any of the 15:15:33
18 others? 15:15:36
19 A. That is correct. 15:15:36

*Objected Upon Deposition Designations Proposed by TAMS:*1. DEPOSITION OF PAUL KING, VOLUME III (March 5, 2004).

Pages	Line & Deposition Designation Testimony (Objections Renewed)	Objection.
7 -13	<p style="text-align: center;">7</p> <p>24 Q. Mr. King, I would like to go back a little bit 25 and try to understand a little bit better the origins, if</p> <p style="text-align: center;">8</p> <p>1 you will, of what became DeSoto Diagnostic Imaging. 2 A. Okay. 3 Q. I think that is something which in your 4 previous testimony you've described as being a project 5 that you became involved in with the Carvels? 6 A. That's correct. 7 Q. And when you talk about "the Carvels," just for 8 the record to make it clear, who do you mean? 9 A. Lynn and Randon Carvel. 10 Q. Now, at the outset of the project, what was Mr. 11 Carvel's involvement in it? What was he supposed to do 12 in connection with the project? What was his role? 13 MR. TATE: Objection, lack of personal 14 knowledge. 15 MR. CHESNEY: Fair enough. 16 BY MR. CHESNEY: 17 Q. Were you involved from the outset with the 18 project getting started? 19 A. Yes, I was. 20 Q. And did you deal with Dr. Carvel and Mr. Carvel 21 in order to get that started? 22 A. Yes, I did. 23 Q. And as a result of your dealings with them, did 24 you develop an understanding of what the role of each of 25 you would be in developing this project and carrying it</p> <p style="text-align: center;">9</p> <p>1 forward? 2 MR. TATE: Objection, lack of personal 3 knowledge. 4 A. Yes. 5 MR. TATE: And if the witness doesn't mind, just 6 give me an opportunity to make an objection and do the 7 same for the other attorneys. 8 MR. CHESNEY: Fair enough. 9 BY MR. CHESNEY:</p>	Hearsay. Lack of personal knowledge. Speculation.

10 Q. What was Mr. Carvel's role to be as the project
 11 was beginning?
 12 MR. TATE: Objection, speculation.
 13 THE WITNESS: My understanding of what his role
 14 was was to set up the finances and the legals for the
 15 company, acquire the property.
 16 BY MR. CHESNEY:
 17 Q. When you say property, you mean real estate?
 18 A. Real estate.
 19 Q. Did he have some background in financing that
 20 you were aware of that made him suitable to do that for
 21 DeSoto?
 22 MR. TATE: Objection, lack of personal knowledge
 23 and speculation.
 24 A. Not that I am aware of.
 25 Q. Did he, in fact, take responsibility for those

10

1 areas of setting up the business?
 2 MR. TATE: Objection, lack of personal
 3 knowledge, speculation.
 4 A. To my knowledge, he did, yes.
 5 Q. What did he do by way of taking care of the
 6 financing and the legals and the real-estate aspects of
 7 the business as you understand it?
 8 MR. TATE: Objection, assuming facts not in
 9 evidence, lack of personal knowledge, speculation.
 10 A. It's my understanding that he met with
 11 real-estate representatives to find a piece of property
 12 to build an imaging center on. He has also met with the
 13 bankers, AmSouth, and some others I don't know about.
 14 Q. To your knowledge, did DeSoto, in fact, incur
 15 some financing obligations with respect to the real
 16 estate that it was obtaining to operate the imaging
 17 center?
 18 MR. TATE: Objection, lack of personal
 19 knowledge, speculation.
 20 A. It's my understanding that they did incur some
 21 financing obligations, yes.
 22 Q. How did you come to that understanding?
 23 A. As we talked, as a member of three, I was a
 24 member of the three persons there, Randon, Lynn and
 25 myself, we talked a little bit about what they had to go

11

1 through to get the property and what they had to put up

2 and how much they had to finance at that point.

3 Q. Now, at some point I believe Mr. Carvel quit
4 his previous job and actually took up formal employment
5 with DeSoto Diagnostic Imaging; am I right about that?

6 MR. TATE: Objection, assuming facts not in
7 evidence, lack of personal knowledge.

8 A. That is correct.

9 Q. Now, do you have any knowledge or information
10 as to why Mr. Carvel quit his previous job?

11 MR. TATE: Objection, hearsay, speculation, lack
12 of personal knowledge.

13 A. Randon told me personally that he had lost all
14 his accounts here in Memphis and went virtually from a
15 hundred and fifty or so thousand dollars down to his last
16 check of a hundred and fifty dollars.

17 Q. When you say he told you, was this in terms of
18 his annual income, this hundred and fifty thousand
19 dollars?

20 A. That's right.

21 MR. TATE: Objection, hearsay. Mr. King, if you
22 wouldn't mind just giving just a pause, okay?

23 THE WITNESS: Okay.

24 MR. TATE: Did the court reporter get my
25 objection? Okay.

12

1 BY MR. CHESNEY:

2 Q. Did Mr. Carvel tell you which accounts he had
3 lost?

4 MR. TATE: Objection, hearsay, lack of personal
5 knowledge, speculation.

6 A. One of the major accounts he had told me about
7 was the Methodist Systems here in Memphis, Tennessee. I
8 wasn't -- didn't care to know of any more.

9 Q. Fair enough. What was Mr. Carvel's previous
10 employment, if you know?

11 MR. TATE: Objection, speculation, lack of
12 personal knowledge.

13 A. He sold -- he worked for Standard Textiles,
14 which sold linens, sheets, pillow cases, gowns, things
15 like that, to a hospital setting.

16 Q. When Mr. Carvel came to work for DeSoto
17 Diagnostic Imaging, what were his duties?

18 MR. TATE: Objection, assuming facts not in
19 evidence.

20 A. We all had a hodge-podge of duties when we

	<p>21 started this process. He acted in, as much as his 22 knowledge would allow him to, in a CFO position, the 23 marketing position. He acquired a construction license 24 through the State of Tennessee so he could be a primary 25 on any constructions that we did. Payroll clerk. We all</p> <p style="text-align: center;">13</p> <p>1 did very numerous amount of things. It's really 2 difficult to say exactly what each one of us did, because 3 it was so numerous. 4 Q. What you've described was basically -- 5 A. This is basic. 6 Q. The work that he did? 7 A. That's correct. 8 Q. Fair enough. Other than talking to Mr. Carvel 9 about his loss of business and reduction in income, did 10 you ever see any evidence that what he was telling you 11 was true with regard to the lower income that he was 12 experiencing? 13 MR. TATE: Objection, assuming facts not in 14 evidence, lack of personal knowledge, speculation. 15 A. I wouldn't know how to judge what I had thought 16 was there. I know he had a company car, and that company 17 car was being given back to Standard Textile. They only 18 had two vehicles at that time and had to purchase another 19 vehicle. So, from what I saw, I didn't see them in any 20 real distress. 21 Q. But he had to give back a vehicle that the 22 employer had previously provided, as you understood it? 23 MR. TATE: Objection, speculation, lack of 24 personal knowledge. 25 A. That is correct.</p>	
15 – 17	<p style="text-align: center;">15</p> <p>3 Q. Now, is it fair to say that by the time you 4 came to actually purchase equipment DeSoto was subject to 5 limitations in terms of what it could finance that 6 affected what it could and couldn't purchase? 7 MR. TATE: Objection, vague and ambiguous, 8 assumes facts not in evidence, mischaracterizes the 9 witness' previous testimony, if that is what you are 10 trying to do. 11 A. My knowledge, there was some limitations that 12 was put on us, both the building, real estate, and 13 equipment to vend inside. 14 Q. What was your understanding of the limitation 15 with regard to the equipment?</p>	Speculation. Lack of personal knowledge.

16 MR. TATE: Objection, lack of personal
 17 knowledge. BY MR. CHESNEY:
 18 Q. In terms of the amount?
 19 MR. TATE: Objection, asked and answered as
 20 well.
 21 A. My understanding was we were limited for total
 22 equipment involvement at \$2.9 million.
 23 Q. Did that include the mammography unit?
 24 A. It did.
 25 Q. Did that include the purchasing of Agfa Pacs?

16

1 MR. TATE: Objection, asked and answer. We are
 2 not here today to rehash all the testimony Mr. King has
 3 already given. So, if you are just trying to clarify, I
 4 don't know what you're trying to clarify. He testified
 5 in great detail regarding all this. And, Mr. King, if
 6 that is the case, I believe you can state that you have
 7 already testified to that.
 8 MR. CHESNEY: I will note for the record that
 9 the next time Mr. Tate purports to instruct the witness,
 10 we will call the judge, and we will seek sanctions.
 11 MR. TATE: I'm absolutely not instructing.
 12 Anybody can speak to the witness. I don't represent him.
 13 You don't represent him. Mr. Gaier doesn't represent
 14 him. All these questions have been gone over. I'm
 15 objecting, asked and answered. It's ridiculous to waste
 16 time and everybody's money to rehash the same questions
 17 over and over and over.
 18 BY MR. CHESNEY:
 19 Q. Do you have the question in mind, Mr. King, or
 20 would you like the reporter to read it back?
 21 A. Please, read it back.
 22 (Whereupon, the reporter read back the requested
 23 portion of the record.)
 24 MR. TATE: Same objections as well.
 25 THE WITNESS: Yes, it did.

17

1 BY MR. CHESNEY:
 2 Q. Approximately what was the cost of the
 3 mammography unit, if you recall?
 4 MR. TATE: Objection, speculation.
 5 BY MR. CHESNEY:
 6 Q. If you know?
 7 A. Somewhere in the range of ninety-six thousand

	<p>8 dollars.</p> <p>9 Q. And if you know ,what was the cost of the Agfa</p> <p>10 Pacs system?</p> <p>11 MR. TATE: Objection, speculation.</p> <p>12 A. About four hundred and eighty thousand dollars.</p> <p>13 Q. As a result of these limitations and what was</p> <p>14 going to be financed, were there some changes made in</p> <p>15 terms of what the equipment would consist of that you</p> <p>16 were purchasing?</p> <p>17 MR. TATE: Objection, vague and ambiguous.</p> <p>18 A. Yes, there were.</p> <p>19 Q. Were some things not purchased that originally</p> <p>20 you would have liked to purchase as a result of these</p> <p>21 financing limitations?</p> <p>22 MR. TATE: Objection, speculation.</p> <p>23 A. Yes, there were.</p> <p>24 Q. Do you recall last time in your deposition you</p> <p>25 talked about Mr. Steiff, who was the salesman for TAMS,</p>	
18 – 24	<p>18</p> <p>20 Q. Let me ask you this question. Would it be fair</p> <p>21 to say, Mr. King, recognizing that you are under oath and</p> <p>22 that your testimony is important, would it be fair to say</p> <p>23 that as you sit here today testifying under oath --</p> <p>24 MR. TATE: I believe the witness -- under oath.</p> <p>25 BY MR. CHESNEY:</p> <p>19</p> <p>1 Q. -- you couldn't really distinguish between</p> <p>2 representations that Mr. Steiff may have made about the</p> <p>3 equipment that was originally contemplated to be</p> <p>4 purchased by DeSoto and the actual equipment that you</p> <p>5 were able to purchase in connection with the financing</p> <p>6 limitations once they came into play?</p> <p>7 MR. TATE: Objection, vague and ambiguous, a</p> <p>8 triple compound question, assuming facts not in evidence,</p> <p>9 lack of personal knowledge, mischaracterizes any previous</p> <p>10 testimony the witness has ever given. If you can</p> <p>11 understand the question.</p> <p>12 THE WITNESS: If I understand what you are</p> <p>13 asking me is that from the very first quote they provided</p> <p>14 us to the last quote they provided us there was a lot of</p> <p>15 things going on in between. Toshiba wasn't our very</p> <p>16 first choice in this selection process. So, we had all</p> <p>17 the vendors quote it. We picked a vendor, and then we</p> <p>18 went after their product.</p> <p>19 Once that vendor proved not to be able to</p>	<p>Speculation. Misleading.</p>

20 finance for us, then we went after our secondary pick,
 21 which was Toshiba at this point. Some of that due to
 22 financing limitations, we had to reduce some things. Our
 23 wish list was pretty broad, and to keep from sacrificing
 24 quality, we reduced some of the product itself.
 25 BY MR. CHESNEY:

20

1 Q. That is what I had understood from your
 2 previous testimony.

3 A. That's correct.

4 Q. My question is, would it be fair to say that
 5 you could not sitting here today fairly distinguish
 6 between which representations Mr. Steiff might have made
 7 about the products as it was originally thought you would
 8 buy them and the products as you actually ended up buying
 9 them?

10 MR. TATE: Objection, assuming facts not in
 11 evidence, asked and answered, mischaracterizes the
 12 witness' previous testimony. He was very specific.

13 A. I would say the second quote we were just
 14 assuming that it would ride on the very first quote that
 15 was given to us, and some of the limitations allowed us
 16 to go in and negotiate some pullout of pieces of
 17 equipment that would reduce the price. Some of the
 18 product we didn't feel like we touched, but they didn't
 19 represent themselves in the end like we thought they
 20 should.

21 Q. The products, you mean?

22 A. That's correct.

23 Q. Do you recall that there was a meeting when you
 24 got down to figuring out precisely what you could and
 25 couldn't buy at Dr. Carvel's home, which involved, I

21

1 think, among other people, you, Mr. Steiff and Dr.
 2 Carvel, to talk about the equipment you were purchasing?

3 MR. TATE: Objection, this is not a 30 (b)(6)
 4 deposition. Your reference to you is vague and
 5 ambiguous. Mr. King, do not speak on behalf of DeSoto
 6 Diagnostic Imaging. Just for the record, I would object
 7 to any line of questioning in which you would try to
 8 insert that.

9 A. I was present at a meeting, the finalization
 10 for equipment purchase, yes.

11 Q. Do you recall, was that a meeting at Dr.

12 Carvel's home?
 13 A. Yes, it was.
 14 Q. You were there at the meeting obviously. Was
 15 Dr. Carvel there?
 16 A. Yes, she was.
 17 Q. Was Mr. Steiff there?
 18 A. Yes, he was.
 19 MR. TATE: Objection as to vague and ambiguous.
 20 I believe the question said something about final
 21 meeting, and the meaning of final being vague and
 22 ambiguous.
 23 BY MR. CHESNEY:
 24 Q. Do you recall whether anyone else was there?
 25 A. Yes, I do.

22

1 Q. Who else was there?
 2 A. Randon Carvel was there. I believe a
 3 representative from H&H was there, I can't remember his
 4 name, and an architect from H&H was there.
 5 Q. To begin generally, give us your best
 6 recollection of what took place at that meeting?
 7 MR. TATE: Again, objection, vague and ambiguous
 8 which meeting we are talking about, assuming facts not in
 9 evidence.
 10 THE WITNESS: The meeting I'm talking about is
 11 one that we were trying to finalize our architectural
 12 plan for the equipment that we had purchased, and that
 13 was the reason for Toshiba being present, a salesperson
 14 from the Toshiba side, the architect from the H&H
 15 building side, the president of the H&H company, and our
 16 CFO or finance person, Randon Carvel, and Dr. Carvel, of
 17 course, our CEO or however she was listed at that point,
 18 person in charge, and myself, to decide at that point
 19 what we could put in the facility and what was feasible
 20 on purchase and what it was going to cost us at a final
 21 end.
 22 We had a lot of electrical we had to take care
 23 of and some prior distribution units for the bigger
 24 equipment that we were trying to hash out that either
 25 Toshiba would pay or we would pay or the builder would

23

1 pay, who is going to pay that thirty or thirty-five
 2 thousand dollars apiece for those pieces of equipment.
 3 BY MR. CHESNEY:

	<p>4 Q. So, was one of the things that was meant to 5 happen at this meeting is you were going to finalize 6 exactly what the features and components would be of the 7 equipment you were buying from Toshiba; is that correct? 8 MR. TATE: Objection, assuming facts not in 9 evidence. 10 A. That is correct. 11 Q. Mr. Steiff testified that at a meeting at Dr. 12 Carvel's at which you, he and Dr. Carvel were present, 13 that you went through the order forms to talk about each 14 modality and what it was you were going to buy with 15 respect to each modality; would you agree with that? 16 MR. TATE: Objection, vague and ambiguous, not a 17 proper question, leading, mischaracterizes Dave Steiff's 18 testimony. Mr. Chesney is not here to testify today. He 19 doesn't have the transcript to read Mr. King. So, as far 20 as trying to reiterate exactly what Mr. Steiff said, I 21 would object to that, assuming facts not in evidence. 22 A. At that meeting that I attended, we did go over 23 our wish list with Dave Steiff and optioned some things 24 out for purchase later if we felt like we should purchase 25 them.</p> <p style="text-align: center;">24</p> <p>1 Q. Was that the meeting at which the final 2 features and components of the various modalities were 3 decided on that you would purchase? 4 MR. TATE: Objection, asked and answered. 5 A. That is correct.</p>	
25 – 26	<p style="text-align: center;">25</p> <p>9 Q. Was Toshiba the only vendor that was willing or 10 able to provide you with financing for the project? 11 A. They were the only vendor that we were looking 12 at that would provide us. We looked at GE and -- 13 Q. Philips? 14 A. Philips. Now, they were able to provide the 15 financing, but it was with a reduction of the equipment 16 as well. All the vendors could provide us with the 17 equipment. All of the vendors would finance for us. But 18 we couldn't get our full product package if we went with 19 GE or Philips. 20 Q. Did you mean that they wouldn't finance all 21 modalities? 22 MR. TATE: Objection, mischaracterizes the 23 witness' previous testimony. 24 A. They would finance all modalities if we wanted</p>	

	<p>25 to increase our capabilities. We didn't have the</p> <p style="text-align: center;">26</p> <p>1 capabilities of going over \$2.9 million mark. We had set 2 that mark as our absolute level for all pacs and all 3 imaging. GE came in at like \$3.6 million, and Philips 4 was really close, too, came in at about the two nine mark 5 as well. But meeting with the Citicorp people, they 6 wanted us to obtain our CON for the MRI system prior to 7 financing.</p> <p>8 We didn't want that contingent put on us at that 9 point, so it wasn't a case that they wouldn't finance us, 10 it was a case that we felt like they put a contingency on 11 us that we weren't going to live with. There's always a 12 risk of losing the CON. We were going to build the 13 imaging center regardless of the other modalities.</p> <p>14 So, when Philips elected to put the contingency 15 on us, we decided to go after our second choice, and that 16 was the Toshiba product.</p> <p>17 Q. Fair enough. Just to clarify a little bit some 18 of your previous testimony, you had talked about giving 19 oral descriptions to the potential vendors of what it was 20 you wanted when you were trying to see whether they might 21 be appropriate to finance the project. At any time, did 22 you ever give anyone a written description of what it was 23 that you wanted, any of the vendors?</p> <p>24 MR. TATE: Objection, vague and ambiguous.</p> <p>25 A. No, we did not.</p>	
28 – 32	<p style="text-align: center;">28</p> <p>9 Q. My question is this, Mr. King, did you ever 10 have any discussions with any of the technologists at 11 DeSoto about any concerns they had about procedures they 12 were being asked to do by Dr. Carvel?</p> <p>13 MR. TATE: Objection, hearsay, relevance.</p> <p>14 A. Yes, I did.</p> <p>15 Q. Can you give us a general description of such 16 conversation as you remember them, then we will get more 17 specific.</p> <p>18 MR. TATE: Same objection, hearsay and 19 relevance.</p> <p>20 A. Are you asking me about the procedures they 21 were doing or the procedures they were not comfortable 22 doing; is that the question?</p> <p>23 Q. Both really.</p> <p>24 MR. TATE: Objection, vague and ambiguous, 25 hearsay, relevance.</p>	Multiple / Compound. Relevance under FRE 401, 402, & 403.

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1 A. Some of the techs weren't comfortable doing
 2 some of the nuclear medicine exams, the hearts, or doing
 3 injections of radio-pharmaceuticals or cardiolyte or
 4 denisons which could stress the heart out, and, of
 5 course, treadmill walking those guys to stress the heart.
 6 They weren't comfortable. They were never trained in
 7 that operation prior to being at DeSoto Diagnostic
 8 Imaging, but they were required to do that.

9 MR. TATE: Also, objection, lack of personal
 10 knowledge, speculation.

11 BY MR. CHESNEY:

12 Q. Was one of your jobs to be the person in charge
 13 of the techs?

14 A. That is correct.

15 Q. And was one of your jobs to make yourself aware
 16 of what it was that they were doing and were being asked
 17 to do as part of their job?

18 A. That is correct.

19 Q. And did you, in fact, make yourself aware of
 20 what they were doing and being asked to do as part of
 21 their job?

22 A. One hundred percent of the time.

23 Q. And is the testimony you are giving now based
 24 on that aspect of your performance of your duties?

25 MR. TATE: Objection, lack of personal

30

1 knowledge, hearsay, relevance.

2 A. Yes, it is.

3 Q. Was there ever an occasion when a nuclear
 4 medicine technician who had been hired by DeSoto stayed
 5 only for a very short time because of the concern they
 6 had about practice in the nuclear medicine area?

7 MR. TATE: Objection, vague and ambiguous,
 8 relevance.

9 A. Yes, there were.

10 Q. Do you recall who that was?

11 A. Yes, I do.

12 Q. Who was it?

13 A. Linda Kroncke.

14 Q. Would you spell her name?

15 A. L-I-N-D-A K-R-O-N-C-K-E.

16 Q. Okay. Do you know where Ms. Kroncke is today?

17 I mean not literally today, but do you know where she is

18 working or living at the moment?
 19 A. When she came to us, she came from Germantown
 20 Methodist, and my understanding, the day after she came
 21 to us, she quit and went back to her original job at
 22 Germantown Methodist.
 23 Q. So, she stayed only for one day?
 24 A. One day.
 25 Q. And what is your understanding of why she

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1 stayed only one day?
 2 MR. TATE: Objection, speculation, hearsay,
 3 relevance.
 4 A. Linda was a registered nuke med tech with
 5 senior experience that Lynn had known and we recruited
 6 via Lynn's request. She knew of her personally and
 7 worked with her. When Linda came in, we gave her a
 8 general orientation of the equipment. She pretty much
 9 knew how to work the equipment. It wasn't a whole lot of
 10 orientation she needed because of her senior experience.
 11 Her concerns were that we would be doing hearts
 12 without physician representation there. And that day we
 13 had, that particular one day, Dr. Carvel had left the
 14 building and there was no physician present in the
 15 building prior to us needing someone there to do the
 16 hearts, stress the hearts out.
 17 MR. TATE: Objection, lack of personal
 18 knowledge.
 19 BY MR. CHESNEY:
 20 Q. Were you there that day?
 21 A. Yes, I was.
 22 Q. When you say there was no physician there, you
 23 mean that Dr. Carvel had left the building; is that
 24 correct?
 25 A. That is correct.

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1 Q. But that nuclear medicine procedures involving
 2 hearts were still going on; is that correct?
 3 A. That is correct.
 4 Q. And that these procedures involved the
 5 injection of materials into the hearts to stress the
 6 hearts for purposes of a test; is that what you are
 7 saying?
 8 A. Materials injected, we injected several
 9 different materials that particular day. We injected a

	<p>10 material that would identify wall failure, injectional</p> <p>11 fraction failure in a heart, we would stress them out on</p> <p>12 the treadmill, and once they were stressed out on that</p> <p>13 treadmill, they could go into failure.</p> <p>14 Q. Okay.</p> <p>15 A. But the actual radio-pharmaceutical wasn't --</p> <p>16 that we used that day didn't stress the heart, the</p> <p>17 treadmill stressed the heart.</p>	
33 – 45	<p style="text-align: center;">33</p> <p>20 Q. If I understand you correctly, it was Ms.</p> <p>21 Kroncke's concern this material had been injected without</p> <p>22 a doctor being on the premises?</p> <p>23 MR. TATE: Objection, speculation, vague and</p> <p>24 ambiguous as far as material.</p> <p>25 A. For the injection of the radio-pharmaceutical,</p> <p style="text-align: center;">34</p> <p>1 that is correct.</p> <p>2 Q. Did Ms. Kroncke inject the material herself?</p> <p>3 MR. TATE: Objection, lack of personal</p> <p>4 knowledge.</p> <p>5 A. Yes, she did. Nuclear medicine techs had the</p> <p>6 authorization to inject materials under a physician's</p> <p>7 guidance.</p> <p>8 Q. I understand that. Does that require a</p> <p>9 physician to be on premises?</p> <p>10 MR. TATE: Objection, speculation, lack of</p> <p>11 personal knowledge.</p> <p>12 A. Anytime a foreign body is injected into a body,</p> <p>13 a human body, a physician has to be present for that</p> <p>14 somewhere in the actual facility itself, doesn't have to</p> <p>15 be on the same floor, can be in the facility itself.</p> <p>16 Q. But Ms. Kroncke's concern was that Dr. Carvel</p> <p>17 was not in the facility when this injection was done,</p> <p>18 correct?</p> <p>19 MR. TATE: Objection, mischaracterizes his</p> <p>20 previous testimony.</p> <p>21 A. That is correct.</p> <p>22 Q. To your knowledge, did May Vokaty ever inject</p> <p>23 patients for nuclear medicine studies when Dr. Carvel was</p> <p>24 not physically in the facility?</p> <p>25 MR. TATE: Objection, relevance.</p> <p style="text-align: center;">35</p> <p>1 A. Yes, she did.</p> <p>2 Q. Did Dr. Carvel know about that?</p>	<p>Calls for an expert witness. The witness is not competent to opine. Relevance under FRE 401, 402, & 403. Lack of personal knowledge. Speculation. Hearsay.</p>

3 MR. TATE: Objection, speculation, lack of
4 personal knowledge.

5 A. Yes, she did.

6 Q. Did you ever have any other discussions with
7 any technologists at DeSoto over any other concerns they
8 had about things they were being asked to do at the
9 facility?

10 MR. TATE: Relevance.

11 MR. CHESNEY: At the facility.

12 MR. TATE: Hearsay.

13 THE WITNESS: Yes, I did.

14 BY MR. CHESNEY:

15 Q. Could you describe those for us?

16 MR. TATE: Objection, relevance, hearsay.

17 A. Had conversation with my MR people and also the
18 radiographic people that -- the MR side, we were
19 injecting or contrasting everybody that walked in the
20 facility. These were direct orders from Dr. Carvel to do
21 that, whether they needed it or not, whether they showed
22 pathology or not, we injected. She was, to my knowledge,
23 present for most all of those. I can't really tell you
24 if she was not or was, but to my knowledge, she was
25 pretty much present for all those.

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1 Q. She being Dr. Carvel?

2 A. Dr. Carvel or a physician of her contract. In
3 the radiographic area May Vokaty has actually performed
4 GIs, which are gastrointestinal exams, with barium being
5 administered and without a physician present, and I can't
6 recall any more other than that.

7 Q. Let's talk a little bit about the -- I think
8 you said injection of contrast or contrasting either one.
9 What would you call it, contrast? You don't have to wait
10 forever. If he has an objection, he will speak quickly.

11 MR. TATE: Yeah, I'll look up.

12 A. The word contrast in our profession is used in
13 really two different aspects. One is oral and one is
14 intravenous. The intravenous is of course -- both
15 require a physician's order, physician to be present
16 before administered, but the intravenous is one that we
17 do a direct stick into a vein, pull up a qualified
18 administration of contrast medium and inject it into that
19 vein.

20 Q. I think in your previous answer you said that
21 this was being done by Dr. Carvel's orders on everyone

22 who walked in the door whether they needed it or not,
 23 whether they showed pathology that required it or not.
 24 Is that a general fair statement of what your previous
 25 testimony was?

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1 MR. TATE: Objection, mischaracterizes the
 2 witness' testimony. Your question was what the
 3 technologist had purportedly conveyed to him, and that
 4 was his response. So, I, again, object to the
 5 mischaracterization of the witness' previous testimony.

6 BY MR. CHESNEY:

7 Q. Go ahead.

8 A. I have lost the question.

9 MR. CHESNEY: Can you read it back.

10 (Whereupon, the court reporter read back the
 11 requested portion of the record.)

12 MR. TATE: Same objection, mischaracterizes --

13 MR. CHESNEY: I will withdraw that. You're
 14 quite correct, Mr. Tate. That wasn't an appropriate
 15 question.

16 BY MR. CHESNEY:

17 Q. The question should have been, first of all,
 18 were the concerns that the techs expressed to you about
 19 the administering of contrast that it was being done by
 20 Dr. Carvel's orders on everyone who walked in the door
 21 whether they needed it or not?

22 MR. TATE: Objection, assuming facts not in
 23 evidence, hearsay, relevance.

24 A. Yes, it was.

25 Q. And to your knowledge, why did that actually

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1 happen?

2 A. To my knowledge, it was the techs' concern that
 3 they were injecting all their patients.

4 MR. TATE: Objection, lack of personal
 5 knowledge, hearsay.

6 BY MR. CHESNEY:

7 Q. Was that actually taking place, the things the
 8 techs said they were concerned about?

9 MR. TATE: Objection, lack of personal
 10 knowledge, hearsay.

11 A. Yes, it was.

12 Q. How do you know that?

13 A. I oversaw the whole operation and actually

14 tried to stop the process at one point. Lynn called me
 15 on the overhead speaker. I was back in the MR CT area at
 16 the time. She asked me to call her. I called her from
 17 the MR console. At that point she told me my techs were
 18 not charging -- were not contrasting everybody, were not
 19 charging for a 3-D multiplanar reconstruction charge, and
 20 I told her at that point I had advised them not to do
 21 that.

22 At that point, she told me I had lost concept of
 23 revenue. She told me, I want your techs to do that. I
 24 said, if you want my techs to do that, you'll need to
 25 tell them yourself of put it on the speaker phone. At

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1 that point, she proceeded to tell the two techs that sat
 2 there to contrast and charge every patient that walked in
 3 there.

4 Q. Did you believe that was an inappropriate
 5 instruction?

6 A. It was very inappropriate.

7 Q. You also mentioned in your answer something to
 8 do with 3-D multiplanar reconstruction or a charge for
 9 that. Could you expand a little bit about what that --
 10 what you were referring to in your answer?

11 MR. TATE: Objection, assuming facts not in
 12 evidence, mischaracterizes the witness' previous
 13 testimony, vague and ambiguous as to the meaning of what
 14 charge is.

15 MR. CHESNEY: Did I say charge?

16 MR. TATE: Yeah. The witness has already
 17 testified he knows nothing about billing, he knows
 18 absolutely zero information about billing, so you are
 19 assuming facts not in evidence as far as trying to use
 20 the word, charge.

21 MR. CHESNEY: I appreciate your effort to try
 22 to back the witness off -- after testifying about things
 23 he actually does know, but you are mischaracterizing what
 24 he said. More to the point, I will withdraw the
 25 question, so there is no basis for an objection.

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1 BY MR. CHESNEY:

2 Q. And I will ask you the following question: Do
 3 you recall in your previous answer, Mr. King, making a
 4 reference to 3-D multiplanar reconstruction?

5 A. Yes, I do.

6 Q. Can you tell us what you were referring to when
7 you mentioned that in your answer?

8 A. 3-D multiplanars or 3-D MPR's have been given a
9 code by the Medicare-Medicaid organization for payment.
10 What they are, in CT there is a lot of 3-D multiplanar
11 that can go on. It requires a physician's order, a
12 referring physician's order, to do that process.

13 In MR, the only thing that is chargeable in a
14 3-D multiplanar is angio, which is probably one of the
15 very few procedures MR does. You have to put it in a
16 format to look at it in a 360 degree rotation both left
17 and right and front to back, so that is truly a 3-D MPR.

18 What we were doing was, Toshiba, along with all
19 the other MR vendors out there, would allow you -- when
20 you start scanning a patient you get what they call a
21 locator image. On that locator image, you get what they
22 call a sagittal plane. That's a left and right plane,
23 about three slices in it; an axial plane, top to bottom,
24 there's three slices in it, and a coronal plane, there's
25 three slices front to back.

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1 Now, with that you locate the description of
2 anatomy that you want to image. That is why we were
3 charging for our 3-D MPRs.

4 Q. Let me see if I understand your answer. Are
5 you saying you were charging for having done a 3-D MPR,
6 when, in fact, all that had happened was there was a
7 generation by the system of a 3-D locator image?

8 MR. TATE: Objection, vague and ambiguous, lack
9 of personal knowledge.

10 A. There was no 3-D locator image generated. It
11 was a three-plane localizer generated.

12 Q. I beg your pardon. A three-plane localizer?

13 MR. TATE: Same objections.

14 BY MR. CHESNEY:

15 Q. Now, a 3-D localizer, is that the same thing as
16 a 3-D MPR reconstruction?

17 A. No, it's not.

18 Q. But if I understand you, you're saying that
19 DeSoto charged for it as if it was the same thing?

20 MR. TATE: Objection, lack of personal
21 knowledge.

22 A. Yes, they did.

23 Q. How do you know that?

24 A. With conversations I had with Lynn Carvel and

25 Jennifer Sneed. At that point, Jennifer was the billing

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1 agent for them. I had one of my coders come to me one
2 day, Sue Barger, and tell me that was totally illegal but
3 Lynn had assured us that it was legal and she was going
4 to continue doing it.

5 MR. TATE: Objection. All this is hearsay.

6 BY MR. CHESNEY:

7 Q. You say you had a conversation with Lynn about
8 this, Lynn Carvel?

9 A. Yes, I did.

10 Q. Can you tell us what that conversation was as
11 best you can recall it?

12 MR. TATE: Objection, hearsay.

13 A. She had asked me what these were that we were
14 doing on the front end. I told her they were three-plane
15 localizers. She said, is that like a 3-D? No, it's not,
16 it's a three plane. So, it could be construed as a 3-D?
17 No, it couldn't, but that is what we charge for it anyway
18 because we required it on the front end.

19 A 3-D MPR request has to be generated by a
20 referring physician and we never had -- the time I was
21 there, we never received one order for a 3-D MPR.

22 MR. TATE: Did you say MPR?

23 THE WITNESS: MPR.

24 BY MR. CHESNEY:

25 Q. If I am correct, are you also saying that you

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1 charged for 3-D MPRs even although you, in fact, didn't
2 do those?

3 MR. TATE: Objection, lack of personal
4 knowledge.

5 A. In the MRI setting, that is correct.

6 Q. You had previously said that in the CT -- I beg
7 your pardon -- in the CT setting those were chargeable,
8 and I believe you did do them, in fact; is that correct?

9 A. We did do those in CT. They were chargeable,
10 and, again, they required an order to produce that 3-D
11 MPR.

12 Q. To your knowledge, in the CT setting were they
13 only done when you received a physician's order?

14 MR. TATE: Objection, lack of personal
15 knowledge.

16 A. No, they weren't.

17 Q. How do you know that?

18 A. Personal observation.

19 Q. From your personal observation and doing your
20 job of being in charge of the technologists at the
21 clinic?

22 A. That's correct.

23 Q. In one of your previous answers you had said
24 something about conversation with Dr. Carvel in which she
25 said to you you had lost your sense of or perspective of

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1 revenue, something to that general effect. Do you recall
2 generally --

3 MR. TATE: Objection, vague and ambiguous.

4 BY MR. CHESNEY:

5 Q. -- that comment?

6 A. I do.

7 Q. Could you put that conversation a little bit
8 more in context for us and tell us as best you can recall
9 exactly what it was that Dr. Carvel said to you, if you
10 don't mind?

11 MR. TATE: Objection, hearsay.

12 A. That was exactly what she said to me.

13 Q. Could you repeat it, because I'm just not sure
14 I understood it, and I may have an additional question
15 about it, just as best you can recall?

16 A. I can't remember the exact date. I was back in
17 the MR CT area. Lynn had paged me overhead to call her
18 number. I did. She told me at that point my techs were
19 not charging for the 3-Ds or contrasting the patients
20 anymore. I told her at that point I had advised them not
21 to.

22 She told me at that point that I had lost
23 perspective of revenue. I told her, fine, Lynn, if that
24 is the case, you need to tell them, because I'm not going
25 to tell them. So, I put her on speaker phone at that

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1 point, and she administered the order to the two
2 technologists who were there at that time.

3 Q. Now, the technologists who worked at DeSoto, I
4 want to talk to you a little bit about them if I may.
5 You, I believe, were involved as you said in your
6 previous sessions in hiring the technologists who were
7 initially brought to work for the operation when it
8 started; is that correct?

	<p>9 A. I was involved in all the hiring and</p> <p>10 terminations of employees.</p> <p>11 Q. And I believe from your previous session it's</p> <p>12 correct that when you hired technologists, you hired</p> <p>13 technologists who were registered in the particular</p> <p>14 modality that they were going to specialize in at DeSoto;</p> <p>15 is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Why did you want to have technologists who were</p> <p>18 registered in the particular specialty they would be</p> <p>19 operating in at DeSoto?</p> <p>20 A. The reason, one of the bigger reasons, was the</p> <p>21 marketing aspect of it. Knowing that you had a</p> <p>22 registered technologist performing that exam on you would</p> <p>23 have been a plus in strategically marketing our facility.</p> <p>24 The knowledge base that they brought to the table, they</p> <p>25 could go ahead and cross-train, and our intent was to</p>	
48 – 69	<p>48</p> <p>1 Q. Okay. I think there is a woman that we</p> <p>2 mentioned before, May Vokaty, who, I think, is still with</p> <p>3 DeSoto unless she has left within the last few weeks, who</p> <p>4 was, I believe, registered in mammography, am I correct,</p> <p>5 May Vokaty?</p> <p>6 A. That's incorrect.</p> <p>7 Q. Oh, I'm sorry. Does May Vokaty have any</p> <p>8 registrations that you are aware of?</p> <p>9 A. Yes, she does.</p> <p>10 Q. Was it ultrasound?</p> <p>11 A. She is a registered radiologic technologist and</p> <p>12 ultrasonographer.</p> <p>13 MR. TATE: Can you repeat that?</p> <p>14 THE WITNESS: She's a registered radiologic</p> <p>15 technologist and an ultrasonographer.</p> <p>16 BY MR. CHESNEY:</p> <p>17 Q. The first one, the registered radiologist?</p> <p>18 A. Radiologic technologist.</p> <p>19 Q. Registered radiologic technologist, is that the</p> <p>20 basic qualification to be a technologist in --</p> <p>21 A. That is the basic requirement for a</p> <p>22 registered -- through the American Registry of Radiologic</p> <p>23 Technology program, which is universally accepted.</p> <p>24 Q. That is not a registration in a particular</p> <p>25 modality was my question; is that right?</p> <p>49</p> <p>1 A. Yes, it is. It's a registration in the</p>	<p>Relevance under FRE</p> <p>401, 402, & 403.</p> <p>Asked and answered.</p> <p>Lack of personal</p> <p>knowledge.</p> <p>Speculation.</p>

2 production of radiation, radiology, x-rays themselves.

3 Q. Oh, okay. So, for example, if she was
4 operating the R&F room, she would be operating that as
5 someone registered in that modality; is that fair to say?

6 A. No, sir. Technologists can do limited fluoro.
7 Fluoro is an active constant radiation that is produced
8 to look at internal components of the body. To introduce
9 foreign media into that body and fluoro that, that is
10 called a diagnostic exam. Technologists cannot do
11 diagnostic fluoroscopy.

12 Q. Just for the jury, what are your actual
13 registrations as a technologist?

14 A. I am a radiographer and an MR technologist.
15 I've got background in CT, and the other is management.

16 Q. Now, I want you --

17 MR. TATE: I'm sorry. I didn't hear that.
18 Background in?

19 THE WITNESS: Radiography, MR, and I have a
20 background in CT, about five years in CT, and I never
21 registered in that modality, but I'm efficient enough to
22 operate the system, and then just management, general
23 management.

24 BY MR. CHESNEY:

25 Q. Now, I want you to focus on the period during

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1 which the Toshiba equipment was installed at DeSoto,
2 which runs, I guess, with regard to everything except CT,
3 from roughly December 2000 until around February or so in
4 2002. Is that consistent with your recollection?

5 A. That is correct.

6 Q. During that period, you always had a registered
7 MR tech because you were always there, correct?

8 A. That is correct.

9 Q. In the area of CT, when you first hired a
10 technologist for CT, you hired a registered tech who was
11 registered in that modality?

12 A. That's correct.

13 Q. Do you recall who that was?

14 A. Debbie Powers.

15 Q. When you hired a technologist for the nuclear
16 medicine operation at DeSoto, you hired a technologist
17 who was registered in that modality; is that correct?

18 A. Yes, I did.

19 Q. Do you recall who that was?

20 A. Rick Stobaugh.

21 Q. Did you hire Ms. Vokaty?
22 A. Yes, I did.
23 Q. Was she there from the beginning of the
24 operation?
25 A. Yes, she was.

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1 Q. And just for clarity, remind us again what her
2 modality registration was?
3 A. She was a radiographer and an ultrasonographer
4 registered under ARDMS, which is American Registry of
5 Diagnostic Medical Sonographers. It's a requirement in
6 most facilities.
7 Q. Okay. Did you hire a technologist to perform
8 mammography?
9 A. Yes, I did.
10 Q. And was that person registered in that
11 modality?
12 A. Yes, she was.
13 Q. And who was that, by the way?
14 A. Cindy Holmes.
15 Q. Is mammography a modality in which an operation
16 is required to have the technologist registered in the
17 specialty to your knowledge?
18 MR. TATE: Objection, vague and ambiguous, the
19 meaning of registered, I don't think it's a term he
20 understands, but go ahead.
21 A. Yes, it is.
22 Q. Did you understand the term "registered" as I
23 used it in the previous question?
24 A. Yes, I did.
25 Q. What did you understand it to mean, so we'll

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1 all be on the same page?
2 A. Registered means that they have had the
3 appropriate amount of education, qualified by the MQSA
4 and FDA to produce radiation to the breast.
5 Q. Now, with regard to the R&F operation at
6 DeSoto, did you hire a technologist who was registered in
7 that modality, or is there such a thing for R&F --
8 A. All my techs were registered in that modality.
9 Q. Is that the basic qualification to be --
10 A. That is the basic qualification.
11 Q. Fair enough.
12 A. But I did hire a person for that and

13 cross-trained them in another area.

14 Q. Fair enough. Who was that?

15 A. Jo Ann Tucker.

16 Q. Based on your previous testimony, Jo Ann was
17 someone who was cross-trained in MR, correct?

18 A. The facility Lynn and I came from, I was in the
19 process of training Jo Ann in MR. She was not registered
20 in that modality, but she was -- she had one year of
21 experience, and we needed a radiographer, and she could
22 do the radiography portion as well as do some of the MR
23 as well.

24 Q. My question, however, was just am I correct,
25 the discipline in which you were cross-training her was

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1 MR, is that correct, at DeSoto?

2 A. That's correct.

3 Q. All right. Again, focusing on the period when
4 the Toshiba equipment was installed at DeSoto, did there
5 come a point when Ms. Powers left DeSoto?

6 A. Yes, it did.

7 Q. Do you have a rough recollection of when that
8 was?

9 A. Six weeks after she was hired.

10 Q. Did her replacement have registration in the CT
11 modality specialty?

12 MR. TATE: Objection as far as -- just to the
13 form and objection as to vague, ambiguous as to
14 registration.

15 MR. CHESNEY: Well, that's fine. We'll make it
16 simpler. I want you to understand, Mr. King, so it will
17 help Mr. Tate understand.

18 MR. TATE: I just want the jury to understand.

19 MR. CHESNEY: Well, I think you want the jury
20 not to understand, but let's not argue.

21 MR. TATE: No, we do want the jury to
22 understand, but I don't think you understand.

23 BY MR. CHESNEY:

24 Q. Okay. Will you understand, Mr. King, that when
25 I ask you if a tech was registered in a particular

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1 modality that I will mean by that registered in the sense
2 that you previously described as having a qualification
3 as a technologist that pertained specifically to that
4 modality that is recognized by a national body?

5 A. I do.

6 Q. Fair enough.

7 MR. TATE: Again, objection, vague and ambiguous
8 regarding the registration.

9 MR. CHESNEY: Good luck.

10 MR. TATE: What? Are you afraid to ask him that
11 question, if you have to be registered? That is my
12 objection. If you're talking about good luck as far
13 as -- my objection is vague and ambiguous as to
14 registration, because you are not making it clear to the
15 jury on what registration means or if you have to be
16 registered. So, if you want to smart off to me, that's
17 fine. That's the point, and I will clean that up, so go
18 ahead.

19 MR. CHESNEY: That is not an objection to the
20 form of the question.

21 MR. TATE: Actually it is, so go ahead.

22 MR. CHESNEY: I'm beginning to believe that
23 maybe you really believe that. It's just possible that
24 maybe you actually believe that.

25 MR. TATE: Whatever you think.

55

1 MR. CHESNEY: Just possible.

2 BY MR. CHESNEY:

3 Q. Okay. Back to CT. When Ms. Powers left, do
4 you recall who replaced her, if anyone?

5 A. Cindy Holmes was her replacement. She also was
6 registered in the CT modality. So, she had triple
7 registries behind her. She replaced as a part-time
8 person, because we were actively recruiting a full-time
9 person in that slot.

10 Q. Did you succeed in recruiting a full-time
11 person?

12 A. Yes, we did.

13 Q. Who was that?

14 A. Brian Gibbs.

15 Q. Was Brian registered in CT?

16 A. Yes, he was.

17 Q. Do you recall whether Brian left DeSoto during
18 the period that the Toshiba equipment was installed
19 there?

20 A. Yes, he did.

21 Q. How long did Brian work for?

22 A. Just under five months.

23 Q. And did anyone replace Brian when he left?

24 A. Yes, they did.
25 Q. Who was that?

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1 A. Pam Kure. Pam Paulk, I think, is her name now.
2 Q. When you say Kure, is that K-U-R-E?
3 A. K-u-r-e at the time, and Paulk now, P-A-U-L-K.
4 Q. Was Pam registered in CT?
5 A. Yes, she was.
6 Q. How long did Pam work for DeSoto?
7 MR. TATE: Objection, lack of personal
8 knowledge.
9 BY MR. CHESNEY:
10 Q. If you know?
11 A. She was there when I left.
12 Q. When exactly was it you left? Just give us
13 your last date there so we can put it in context.
14 A. I believe it was somewhere around June 10.
15 Q. Did Cindy Holmes leave DeSoto to your
16 knowledge?
17 A. Yes, she did.
18 Q. Do you know when she left roughly?
19 A. I don't know the exact time she left.
20 Q. Do you recall roughly how long she worked at
21 DeSoto before she left?
22 A. Probably about nine months.
23 Q. Okay. Mr. Stobaugh, I think you said, was the
24 first tech hired in the nuclear medicine area, and he was
25 registered in that modality, correct?

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1 A. Yes, he was.
2 Q. Mr. Stobaugh, did he leave DeSoto?
3 A. Yes, he did.
4 Q. How long did he work there?
5 MR. TATE: Objection, mischaracterizes previous
6 testimony, assuming facts not in evidence.
7 A. I think about six days.
8 Q. About six days?
9 A. Sixty days.
10 Q. I'm sorry. When he left, was anyone hired to
11 replace him?
12 MR. TATE: Again, objection, assuming facts not
13 in evidence.
14 A. No, it wasn't. We were recruiting. We were in
15 the process of recruiting someone.

16 Q. Did you eventually recruit someone to replace
17 him?

18 A. Recruited Linda Kroncke.

19 MR. TATE: I'm sorry. I didn't hear you.

20 THE WITNESS: We recruited Linda Kroncke.

21 BY MR. CHESNEY:

22 Q. Okay. Did she set a DeSoto record by lasting
23 only one day?

24 MR. TATE: Objection, vague and ambiguous.

25 A. I had about three people that set that record.

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1 Q. Who were the others?

2 A. A couple of clerks that I had, I mean, I can't
3 remember their names, our files.

4 MR. TATE: Did you say clerks?

5 THE WITNESS: Clerks.

6 BY MR. CHESNEY:

7 Q. So, these were not technologists, these were
8 clerical staff?

9 A. That's correct.

10 Q. Okay. Did Ms. Kroncke set the record for
11 technologists?

12 MR. TATE: Objection, vague and ambiguous,
13 whatever set the record means.

14 BY MR. CHESNEY:

15 Q. It terms of shortness of stay at DeSoto?

16 A. She had the shortest amount of tenure there,
17 yes.

18 Q. Was she the first person who was recruited
19 after Mr. Stobaugh left to replace him in the nuclear
20 medicine area?

21 A. Yes, she was.

22 Q. After she came and went, did anyone replace her
23 in the nuclear medicine area?

24 A. After Rick had left, May replaced Rick.

25 Q. May Vokaty?

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1 A. May Vokaty. Then Cindy was trained around
2 there as well to replace May, and, of course, there was
3 May and Cindy. After Cindy left, somewhere in that time
4 frame Linda came on for the one day and she left. Then
5 Pam Kure, Pam Paulk came on, and she was trained around
6 there as well from CT by May and Dr. Carvel. And so the
7 nuclear medicine show out there was ran by a sonographer,

8 mammographer, and a CT tech.

9 MR. CHESNEY: Are you going to change paper?

10 Just before you do that, could you read back his answer?

11 I just wanted to get the last part of the answer.

12 (Whereupon, the court reporter read back the

13 requested portion of the record.)

14 THE VIDEOGRAPHER: We're going off the record.

15 The time is approximately 10:18. This concludes tape one

16 to the videotaped deposition of Mr. Paul King.

17 (Whereupon, a recess was taken.)

18 THE VIDEOGRAPHER: We are going back on the

19 record. The time is approximately 10:38. This is the

20 beginning of tape two to the videotaped deposition of

21 Mr. Paul King.

22 BY MR. CHESNEY:

23 Q. Okay. We were speaking, Mr. King, about the

24 nuclear medicine operation at DeSoto, and I think you

25 said that it was being run at one point by technologists,

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1 none of whom was actually a nuclear medical specialist,

2 is that correct, it came to be ran that way?

3 MR. TATE: Objection, vague and ambiguous.

4 A. None of the technologists that were running it

5 during that time frame you're talking about had ever

6 experienced nuclear medicine except for a two- or

7 three-week rotation while they were in school.

8 Q. Now, I think you said that May Vokaty was

9 purporting to train the other technologists in this area

10 of operation; is that correct?

11 A. I said Lynn Carvel and May Vokaty were, yes.

12 Q. And was May Vokaty among the techs who to your

13 knowledge did not have prior experience with nuclear

14 medicine before coming to DeSoto except in their rotation

15 as basic radiographers?

16 MR. TATE: Objection, vague and ambiguous.

17 A. Yes, she was.

18 Q. How about Dr. Carvel, to your knowledge did she

19 have experience and expertise in nuclear medicine before

20 you installed a nuclear medicine camera at DeSoto?

21 MR. TATE: Objection, lack of personal

22 knowledge.

23 A. To my knowledge, she only had interpretable

24 experience, she interpreted (sic) the image. She was

25 the diagnostician there.

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1 Q. So, she had diagnostic experience interpreting
2 nuclear medicine images, but not otherwise in operating
3 the nuclear medicine equipment; is that what you're
4 saying?

5 MR. TATE: Objection, lack of personal
6 knowledge, mischaracterizes the witness' testimony.

7 A. To my knowledge, that is correct.

8 Q. And what is the basis of your knowledge to that
9 effect?

10 A. Prior to the opening of this project, I had to
11 put another camera in the facility that I was the
12 director of, which is Delta Medical Center in Memphis,
13 Tennessee. Going to Lynn pursuing the device, she didn't
14 know anything about the camera. Of course, we
15 subsequently put a camera in place. When we started to
16 buy this particular camera, I had advised her I knew very
17 little about the nuke, and her response was the same, she
18 knew very little about nuke. So, it was very difficult
19 for us to buy a product that was comprehensive enough to
20 satisfy our needs.

21 Q. To your knowledge, did Dr. Carvel ever receive
22 any formal training in how to operate the Toshiba nuclear
23 camera that was installed at DeSoto?

24 A. To my knowledge, the applications had come in
25 at one point and trained May and Lynn. Lynn was in and

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1 out of the room receiving some of that training.

2 Q. Now, this was not the training that took place
3 in conjunction with the installation of the equipment on
4 the front end, was it?

5 A. That's correct. It was not the training.

6 Q. So, this was some additional training that
7 Toshiba tried to provide; is that correct?

8 MR. TATE: Objection, mischaracterizes the
9 witness' previous testimony.

10 A. Yes, it was.

11 Q. Was that after Mr. Stobaugh left?

12 A. Yes, it was.

13 Q. Other than that training, are you aware of Dr.
14 Carvel ever having had any formal training in how to
15 operate the nuclear camera?

16 A. To my knowledge, she had no formal training.

17 Q. Just going through the various modalities, Ms.
18 Vokaty I think was, you said, a registered ultrasound

19 technologist, correct?

20 A. I said she was a registered radiologic
21 technologist and a registered sonographer as well.

22 Q. Okay. When you say registered sonographer,
23 does that mean you are registered in what is commonly
24 called ultrasound?

25 A. Ultrasound.

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1 Q. Yeah, okay. Now, once Ms. Vokaty began to take
2 on additional responsibilities related to nuclear
3 medicine, was anyone else brought in to assist in the
4 area of ultrasound, any other technologist?

5 MR. TATE: Objection, assuming facts not in
6 evidence, mischaracterizes the witness' previous
7 testimony.

8 A. There was no other technologist brought in for
9 ultrasound at that time.

10 Q. Am I correct though that Ms. Vokaty did at one
11 point began to undertake responsibilities for nuclear
12 medicine from a technologist's point of view?

13 A. Yes, she did.

14 Q. So, she basically had to try to handle both
15 ultrasound and nuclear medicine at some point?

16 MR. TATE: Objection, vague and ambiguous as to
17 what "try" means, assuming facts not in evidence.

18 A. May was charged with the responsibility of
19 providing service to the ultrasound department and to the
20 nuclear medicine department.

21 Q. When Cindy Holmes left, did someone replace her
22 in the mammography area?

23 A. Yes, they did.

24 Q. Who was that, if you know?

25 A. Holly Clark.

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1 Q. And was Holly Clark a technologist who was
2 registered in mammography?

3 A. Yes, she was.

4 Q. And do you know how long Holly Clark worked for
5 DeSoto?

6 A. About a month, month and a half.

7 Q. And when she left, did anyone replace her as
8 the technologist in charge of the mammography operation?

9 A. The replacement of Holly occurred through one
10 of my MR technologists. She was also registered in

11 mammography, so she just transferred over there and did
12 the mammography as well.

13 Q. Did you then replace that person in the MR
14 area?

15 A. That person we had replaced with another
16 person. I think her name was Erin Singer, and Erin
17 stayed about a month, month and a half maybe. She was in
18 and out. It was more of a casual part-time person,
19 someone that Lynn had requested I bring in, excellent
20 technologist, one of the best in the city, one of the
21 best I ever met, but unfortunately had some other quirks
22 about her I wasn't comfortable with, but she could
23 definitely pick up the pace. She stayed a little while.
24 Debbie was pulled out of MR to mammo- when mammo- was
25 active.

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1 Q. Debbie Powers?

2 A. Debbie May.

3 Q. Debbie May, I'm sorry.

4 A. Debbie May.

5 Q. When did she turn up?

6 A. Debbie May came in after Brian Gibbs had left.
7 Now, Jo Ann and Debbie were both in MR together. Debbie
8 had assumed multiple roles herself of mammography, CT,
9 and MR. Jo Ann's roles were radiography, MR. Pam's
10 roles were CT, nuclear medicine. May's roles were
11 ultrasound, nuclear medicine, and some radiography,
12 fluoro.

13 Q. How would you categorize the amount of turnover
14 of technologists at DeSoto while you were there?

15 MR. TATE: Objection, speculation.

16 A. It's a grossly abnormal turnover.

17 Q. In terms of being grossly less than normal or
18 grossly higher than normal?

19 A. Higher.

20 MR. TATE: Objection, vague and ambiguous as to
21 what you are comparing it to.

22 A. Grossly higher than normal.

23 Q. You talked earlier about some of the concerns
24 technologists had expressed to you about things they were
25 being asked to do by Dr. Carvel. Do you have any basis

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1 for testifying as to whether any of that had any effect

2 on the turnover you were experiencing at DeSoto?

3 MR. TATE: Objection, speculation, hearsay.

4 A. Yes, it did.

5 Q. Can you tell us how it did?

6 A. Ninety percent of all technologists are a breed
7 of people who will take an order and complete that order.
8 The orders that were being given were falling far above
9 their training. They felt uncomfortable doing this.
10 They felt like they could be libelous (sic).

11 Q. Did you say libelous or liable?

12 A. Liable for it. And just -- if it wasn't done
13 right, they would pretty much catch a lot of heat from
14 it. I would have to write them up. I'd have to counsel
15 them at Lynn's request. Lynn was very vocal. She is
16 very vocal in patient areas, which was demeaning to the
17 technologists, and demanding as far as you had to be one
18 hundred percent busy all the time, no rest periods, no
19 laughing, no camaraderie.

20 Q. So, these were all factors that in your
21 judgment contributed to the abnormally high turnover of
22 technologists; is that correct?

23 MR. TATE: Objection, vague and ambiguous.

24 A. Yes.

25 Q. Did the abnormally high turnover of

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1 technologists from what you've just -- strike that. Did
2 -- strike that question. Did the circumstances you just
3 described relating to technologists being asked to do
4 things that they were not comfortable with, Dr. Carvel's
5 addressing them in ways that were demeaning in public
6 areas, things like that, not allowing laugh periods --
7 not allowing rest periods and not allowing laughing and
8 things like that, did that affect the morale at DeSoto in
9 any way that you were able to observe?

10 MR. TATE: Objection, relevance, assuming facts
11 not in evidence, mischaracterizes the witness' previous
12 testimony.

13 A. Yes, it did.

14 Q. How did it affect the morale?

15 MR. TATE: Object to the form.

16 A. On a daily basis each and every employee there
17 was afraid of their job and afraid that they would be
18 terminated because of some problem they might have
19 exhibited, maybe they didn't get the right scan, maybe
20 they didn't charge the right procedure, maybe they didn't
21 do the laundry, maybe they didn't clean out a laundry

22 hamper at the end of the evening, maybe they used too
 23 much supplies, pretty much that.
 24 Q. Now, did this affect on the morale and the
 25 turnover of technologists at an abnormally high rate, did

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1 that have an effect on the ability of DeSoto to run its
 2 operations properly?

3 MR. TATE: Object to the form.

4 A. No, it did not.

5 Q. How was that avoided at DeSoto?

6 A. Through my management.

7 Q. Did you have to spend a good deal of time
 8 trying to make sure that these situations didn't affect
 9 the operation of the facility?

10 A. Yes, I did.

11 Q. Could you describe that by way of a percentage
 12 of your time?

13 MR. TATE: Objection, asked and answered.

14 A. My responsibilities were as great as or greater
 15 than anyone else there including Lynn's. I was the
 16 administrator, the human resource director, the pacs
 17 administrator, semimarketing person with Randon, the
 18 problem solver for Lynn. I helped Lynn with some of the
 19 MR interpretations. She did the interpretation, I just
 20 told her what we saw and we could visualize back there to
 21 help her proceed forward in a timely fashion. I scanned
 22 MR.

23 I visited all my technologists on a daily basis,
 24 all my employees on a daily -- found out the concerns
 25 they had, made sure all the transcription got out to the

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1 referring physicians in a timely fashion. So, to
 2 quantify my percentage of time of making sure it ran
 3 right is a hundred percent of the time.

4 Q. When a new technologist would come on board at
 5 DeSoto, was it necessary to train them in how DeSoto ran
 6 its operations, did its scans, things like that?

7 MR. TATE: Object to the form, vague and
 8 ambiguous as to "ran its operations."

9 A. Yes, it was.

10 Q. Was it also necessary to provide them with
 11 training in how to operate the particular equipment that
 12 was installed at DeSoto?

13 MR. TATE: Objection, assuming facts not in

	<p>14 evidence.</p> <p>15 A. If they had no previous training on that type</p> <p>16 of equipment, yes, it was.</p> <p>17 Q. When you say type of equipment, I take it you</p> <p>18 you mean, for example, if they had no previous experience</p> <p>19 with a Toshiba Asteion scanner you would have to teach</p> <p>20 them the operations of a Toshiba Asteion scanner; is that</p> <p>21 correct?</p> <p>22 MR. TATE: Object to the form.</p> <p>23 A. A good CT technologist, they will have to be</p> <p>24 trained on the actual function of the screen, but the</p> <p>25 technology that drives the CT scanner, no.</p>	
73 – 75	<p style="text-align: center;">73</p> <p>4 Q. Now, you talked at length with Mr. Tate earlier</p> <p>5 on about the MR equipment, but let me ask you a few</p> <p>6 questions about the other modalities and just your</p> <p>7 general impression of the other modalities that were</p> <p>8 installed. The CT scanner was an Asteion CT scanner; is</p> <p>9 that correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And how would you characterize the overall</p> <p>12 operation of the Asteion in terms of its performance?</p> <p>13 A. On a scale of one to ten, I would say it was an</p> <p>14 eight and a half or a nine.</p> <p>15 Q. Is that a good score?</p> <p>16 A. That is an excellent score.</p> <p>17 MR. TATE: I'm sorry?</p> <p>18 THE WITNESS: Excellent score.</p> <p>19 BY MR. CHESNEY:</p> <p>20 Q. How about the nuclear medicine equipment?</p> <p>21 A. My limited knowledge of nuclear medicine</p> <p>22 affects my judgment on that piece of equipment, but what</p> <p>23 I would know about it, I would think when Rick was there</p> <p>24 he had virtually no problems with it other than in some</p> <p>25 general applications. And when we would bring in a</p> <p style="text-align: center;">74</p> <p>1 contract person, Jimmy Smith with Syncorp (phonetic), to</p> <p>2 would look at the equipment, he virtually said that there</p> <p>3 was no problems with it. Of course, with the apps people</p> <p>4 and the field service engineers from Toshiba coming in,</p> <p>5 they really couldn't find a whole lot of problems with it</p> <p>6 as well.</p> <p>7 Q. You mentioned Jimmy Smith. Is that a gentleman</p> <p>8 who sometimes is also known as James Smith, or you have</p> <p>9 always known him as Jimmy?</p>	<p>Lack of foundation.</p> <p>Lack of personal</p> <p>knowledge.</p> <p>Speculation.</p> <p>Relevance under FRE</p> <p>401, 402, & 403.</p>

	<p>10 A. I have always known him as Jimmy, but James 11 would be -- 12 Q. I tell you what, just to make sure we're 13 talking about the same person, because I think Ms. Vokaty 14 talked about someone called James Smith, was Jimmy Smith, 15 the person you're talking about, someone who came in to 16 DeSoto to work, among other things, in connection with 17 the nuclear medicine operation in some respect? 18 A. Jimmy Smith, could be James Smith, but Jimmy 19 Smith, as I know him, did quality management for the 20 nuclear medicine programs. He provided license, and 21 writing up the documentation for the license, doing the 22 surveys, sending that documentation to the state for 23 acceptance. 24 Q. It's that Jimmy Smith that you were talking 25 about when you described previously his assessment of the</p> <p style="text-align: center;">75</p> <p>1 nuclear camera? 2 A. That's correct.</p>	
75 – 79	<p style="text-align: center;">75</p> <p>16 Q. Now, with regard to the ultrasound unit, did 17 that function in accordance with its specifications as 18 near as you could tell, generally speaking? 19 A. The ultrasound did function within the 20 specifications for that piece of equipment. 21 Q. Did there come a point, Mr. King, when you 22 formed the conclusion that Dr. Carvel's goal was to get 23 rid of the Toshiba equipment that had been installed? 24 MR. TATE: Objection, relevance, vague and 25 ambiguous, lack of personal knowledge, speculation.</p> <p style="text-align: center;">76</p> <p>1 A. At some time after eight or nine months or so, 2 some of the problems that existed, some of them were 3 minor, some of them were major, MR certainly major. We 4 had talked as a three-member team, Randon, Lynn and 5 myself, about negotiating the removal of this or the 6 upgrade of that MR system. 7 And somewhere after that, we had a meeting with 8 Toshiba, and Toshiba kind of reared up on their haunches 9 and said, we're not going to replace it, but we'll modify 10 it. At that point, Lynn walks out and says, no, we're 11 getting rid of the whole thing. After our meeting that 12 is what she had indicated to Randon and myself. Randon 13 and I both told her that it was not a good idea, but I</p>	<p>Calls for an expert witness. The witness is not competent to opine. Relevance under FRE 401, 402, & 403. Lack of personal knowledge.</p>

14 was going to support Lynn in any kind of effort she had
 15 there. Randon was not going to support her, did not
 16 support her in it. But I did, because she was my boss.
 17 I worked for her. It was our dream. I put it together.
 18 Q. Okay. I'm not sure if that was exactly
 19 addressed to the question I asked you, but, nonetheless,
 20 it's got some interesting stuff, so we need to explore
 21 it. That's the danger of being a witness. You give an
 22 answer, we get interested. When you are referring to a
 23 meeting at which Toshiba declined to remove the equipment
 24 and Dr. Carvel then walked out, was that a meeting as you
 25 recall in November of 2001 or thereabouts?

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1 A. Somewhere in that frame, I don't remember the
 2 exact dates.

3 Q. That was a meeting that was -- took place at
 4 the DeSoto Imaging; is that right?

5 A. The meeting I'm talking about took place at
 6 DeSoto Diagnostics.

7 Q. Is it fair to say there were a number of people
 8 there on the Toshiba side and a number of people there on
 9 the DeSoto side at this meeting?

10 MR. TATE: Objection to the form, vague and
 11 ambiguous.

12 A. Yes, there was.

13 Q. You said that you and Randon and Dr. Carvel had
 14 your own meeting relating to the course of action that
 15 DeSoto ought to take in the circumstances; is that right?

16 A. That's correct.

17 Q. And that Dr. Carvel's position was that she
 18 wanted to insist that the equipment be removed, correct?

19 MR. TATE: Object to the form, mischaracterizes
 20 the witness' previous testimony.

21 A. She had insisted that we look at that as a
 22 course of action.

23 Q. And I think you said that Mr. Carvel did not
 24 support her in that view; is that correct?

25 A. That is correct.

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1 Q. And I think you also said you didn't agree with
 2 that course of action yourself; is that correct?

3 A. That is correct.

4 Q. And did you and Mr. Carvel tell Dr. Carvel at
 5 the time that you didn't agree with that as a proposed

	<p>6 course of action?</p> <p>7 A. We did.</p> <p>8 Q. But then eventually you said Dr. Carvel was</p> <p>9 going to insist on that anyway, and, therefore, you</p> <p>10 decided you would support her because she was your boss,</p> <p>11 even although you didn't agree with it; is that right?</p> <p>12 MR. TATE: Objection, mischaracterizes the</p> <p>13 witness' previous testimony.</p> <p>14 A. It wasn't eventually. It was in the same</p> <p>15 meeting we had. I told Randon that I would support</p> <p>16 anything she needed to do here, and he didn't have to</p> <p>17 support it, but I was going to support it because we were</p> <p>18 three, counted on all three of us deciding to do</p> <p>19 something to make it happen. And she in my respect was</p> <p>20 our golden goose. We couldn't do it without her, and I</p> <p>21 was going to support her in every effort she wanted to</p> <p>22 take advantage of. I did inform her at that time it</p> <p>23 would be a very difficult road, it'd be very nasty. It</p> <p>24 could be done, and I can do it. Anything you want me to</p> <p>25 do, I can do.</p> <p style="text-align: center;">79</p> <p>1 Q. But you yourself did not agree with that as a</p> <p>2 course of action?</p> <p>3 A. I did not.</p> <p>4 Q. Now, is it fair to say that you believed at</p> <p>5 that time that Toshiba and DeSoto could have worked out</p> <p>6 any problems or issues they were having with equipment or</p> <p>7 imaging issues had they both worked together in good</p> <p>8 faith to accomplish that?</p> <p>9 MR. TATE: Objection, vague and ambiguous, the</p> <p>10 meaning of a lot of those terms in the question, assuming</p> <p>11 facts not in evidence.</p> <p>12 A. Yes, I did.</p> <p>13 Q. Did you tell Dr. Carvel that?</p> <p>14 A. Yes, I did.</p>	
80 – 81	<p style="text-align: center;">80</p> <p>20 Q. But they had said they would in good faith try</p> <p>21 to resolve your problems with all the equipment; is that</p> <p>22 fair to say?</p> <p>23 MR. TATE: Objection, mischaracterizes the</p> <p>24 witness' previous testimony. I don't think he ever</p> <p>25 testified they were acting in good faith.</p> <p style="text-align: center;">81</p> <p>1 A. Yes, sir.</p>	<p>Misleading. Calls for an expert witness. The witness is not competent to opine. Relevance under FRE 401, 402, & 403. Asked and answered. Lack of personal knowledge. Speculation. Hearsay.</p>

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11 Q. Mr. King, we talked a little bit earlier about
 12 concerns that technologists had expressed to you about
 13 things they were being asked to do in connection with the
 14 operations at DeSoto.

15 MR. TATE: Objection, vague and ambiguous.

16 Q. Did any technologist at DeSoto ever express to
 17 you any concerns about the level of involvement they were
 18 being asked to have in reading or interpreting images?

19 MR. TATE: Objection, hearsay.

20 A. Yes they did.

21 Q. Can you tell us what conversations you recall
 22 with technologists on that subject?

23 MR. TATE: Same objection, hearsay.

24 A. Pam Paulk had approached me at one point,
 25 because Lynn had wanted her to tell her what she had seen

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1 on some CT scans and pretty much give her impression of
 2 that, and she didn't feel that was her job. She supplied
 3 the data, Lynn should read that data. Debbie May also
 4 expressed that along with Jo Ann. Lynn constantly asked
 5 the MR techs what they saw and what they needed to see.
 6 They were very uncomfortable with any form of
 7 interpretation themselves. Those are the only ones that
 8 lodged any kind of concerns.

9 Q. How about you personally, did you ever have any
 10 discomfort about the level of involvement you were asked
 11 to have with reading or interpreting images?

12 A. I had discomfort in actually dictating the
 13 images -- dictating the information. But I had no
 14 discomfort in sitting and consulting with Lynn on what
 15 we saw and helping her and advising her in the
 16 description of what should be put down in the
 17 interpretation, but I did have discomfort in actually
 18 dictating the data myself.

19 Q. Well, did that ever happen?

20 A. I attempted to dictate one time, and I was a
 21 complete failure. It takes a special, vocal person.
 22 Lynn certainly had the talent for formulating good
 23 paragraphs, good interpretations, good impressions. I
 24 know May Vokaty did a lot of interpretations herself. I
 25 watched her. She was pretty fluent at it as well. She

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1 would have made a good radiologist if, indeed, she had

2 the education for it.

3 Q. When you say May Vokaty did interpretations
4 herself, what do you mean?

5 A. A lot of the sonographers, radiologists, and
6 this is universal, they will write down their impression,
7 and the radiologist ninety percent of the time will
8 probably take that impression as gospel, but they never
9 actually did dictation. May would actually do dictation
10 on that system.

11 Q. Do you mean she would dictate the final report?

12 A. She would dictate a report that Lynn would
13 review and then send it out, yes.

14 Q. Now, on the occasion when you did that, did you
15 do that voluntarily, or did Dr. Carvel ask you to do
16 that?

17 A. Dr. Carvel asked me to do it.

18 Q. Were you comfortable with doing it?

19 A. No, I was not.

20 Q. Why not?

21 A. I am not a physician.

22 Q. Do you believe that May Vokaty should have been
23 dictating reports?

24 A. I don't believe she should have been dictating
25 the reports. I think her impression was important to the

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1 physician for that interpretation though.

2 Q. So, there is a difference between sharing your
3 impressions with a physician and actually dictating the
4 reports in your mind?

5 A. That is correct.

6 Q. And sharing your impression is appropriate for
7 technologists who are comfortable doing it; is that
8 right?

9 A. That is correct.

10 Q. But actually dictating the reports is not?

11 A. That's correct.

12 Q. Do you know if any of the other technologists
13 were actually asked to dictate reports, or have you told
14 us everything you know about that?

15 MR. TATE: Objection, assuming facts not in
16 evidence.

17 A. I don't think any other technologist was
18 comfortable at all sitting at the talk station, which is
19 the dictation station itself. It's a verbalized station
20 as opposed to an actual transcriber.

21 Q. Is that what Ms. Vokaty used to dictate the
22 reports?

23 A. Yes, she did.

24 Q. Is that also what Dr. Carvel used to dictate
25 the reports that she dictated?

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1 A. Yes, she did.

2 Q. So, she and May Vokaty were dictating reports
3 into the same system?

4 A. That's correct.

5 Q. You said in your earlier testimony that Dr.
6 Carvel at one point had told you that you had lost
7 perspective on revenue when you were having your
8 discussions about the 3-D reconstruction issue, or was
9 that actually about the injection of contrast issue?

10 A. That was about both of those.

11 Q. Both of those, okay. When you were having that
12 discussion, or when she said that to you, did you respond
13 in any way, other than to say, you need to tell the
14 technologists directly if that is what you want them to
15 do?

16 A. That was my response.

17 Q. Okay. Did you have any other discussion with
18 her either then or at any other point as to what she
19 meant about your losing perspective on revenue?

20 A. I avoided her the rest of that day.

21 Q. What did you understand her to mean when she
22 said to you that you were losing perspective on revenue?

23 MR. TATE: Objection, speculation.

24 A. My understanding of what she meant was the
25 direction of the day, that was a revenue-based operation,

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1 we had to generate revenue. My perception was as the
2 administrator was to continue that revenue. We would do
3 fifteen MR's a day, didn't make any difference, we were
4 going to produce that revenue.

5 Q. Whether you did it right or wrong?

6 MR. TATE: Objection, mischaracterizes the
7 witness' previous testimony.

8 A. In my mind, we were doing it right, with the
9 exception of some of the billing. All the images were
10 appropriately collected.

11 Q. Except on the MR you didn't do the 3-D
12 reconstruction, you said, right?

	<p>13 A. Didn't do the 3-D reconstruction, that's</p> <p>14 correct.</p> <p>15 Q. But you billed for that anyway?</p> <p>16 A. That is correct.</p> <p>17 Q. And certainly on the contrast, on the with or</p> <p>18 without studies, that is with or without contrast, if I</p> <p>19 understand you, what you're saying is it wasn't a case</p> <p>20 where Dr. Carvel didn't do them but billed for them,</p> <p>21 right, she did them and billed for them, correct?</p> <p>22 MR. TATE: Vague and ambiguous, lacks personal</p> <p>23 knowledge.</p> <p>24 A. That is correct.</p> <p>25 Q. And the concern was that she was doing with and</p> <p style="text-align: center;">87</p> <p>1 without studies whether or not they were appropriately</p> <p>2 indicated in the circumstances, is that correct, on</p> <p>3 everybody who walked in the door?</p> <p>4 MR. TATE: Objection to form, vague and</p> <p>5 ambiguous.</p> <p>6 A. That is correct.</p>	
90 – 91	<p style="text-align: center;">90</p> <p>3 Q. Did DeSoto have any other disagreements with</p> <p>4 any other vendors about whether or not DeSoto was</p> <p>5 properly paying things it was meant to pay?</p> <p>6 MR. TATE: Objection, vague and ambiguous as</p> <p>7 what's properly pay, or who's in the right or wrong, et</p> <p>8 cetera, assuming facts not in evidence.</p> <p>9 A. It's my understanding from personal experience</p> <p>10 that the secondary company we brought in after we removed</p> <p>11 the Toshiba equipment had problems getting payment as</p> <p>12 well.</p> <p>13 Q. What was the secondary company you brought in?</p> <p>14 A. Jim Miller, Incorporated.</p> <p>15 Q. And what did that company do?</p> <p>16 A. Provided us with a nuclear medicine camera and</p> <p>17 an R&F room.</p> <p>18 Q. What were the problems that Mr. Miller</p> <p>19 experienced as you are aware of them?</p> <p>20 A. We weren't satisfied with the installation. We</p> <p>21 weren't satisfied in the performance of the equipment.</p> <p>22 Those are the basic main two.</p> <p>23 Q. And when you say we weren't, you are talking</p> <p>24 about DeSoto?</p> <p>25 A. DeSoto.</p>	Speculation.

	<p style="text-align: center;">91</p> <p>1 Q. Was that you or Dr. Carvel?</p> <p>2 A. That was she and I both.</p> <p>3 Q. Okay. Did you as a result end up paying less</p> <p>4 than you had agreed to pay on a nuclear camera?</p> <p>5 A. Yes, we did.</p>	
93 – 94	<p style="text-align: center;">93</p> <p>12 Q. I want to try to clarify a couple of things</p> <p>13 from this morning, because I think we were having a whole</p> <p>14 variety of mathematical errors, and I want to try to see</p> <p>15 if we can clarify the situation. I think you said that</p> <p>16 you probably did maybe forty-five to fifty percent of the</p> <p>17 MR examinations that were done at DeSoto on the Toshiba</p> <p>18 equipment yourself; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Okay. And my questions is, of those</p> <p>21 examinations that you performed yourself, on what</p> <p>22 percentage were you able to get good acceptable images?</p> <p>23 A. Well, I would think it would be properly closer</p> <p>24 to a ninety percent ratio. I always was able to make the</p> <p>25 equipment perform. I mean, it did have its faults, but a</p> <p style="text-align: center;">94</p> <p>1 good MR technologist can reach in and adjust the</p> <p>2 parameters and get some good image data out of it, so.</p>	Speculation.
94 – 99	<p style="text-align: center;">94</p> <p>23 Q. Is it true that also Dr. Carvel was unwilling</p> <p>24 to make the equipment available to Toshiba service</p> <p>25 personnel during hours of operation to avoid losing</p> <p style="text-align: center;">95</p> <p>1 revenue from examinations?</p> <p>2 MR. TATE: Objection, assuming facts not in</p> <p>3 evidence.</p> <p>4 A. I think from an operational standpoint when the</p> <p>5 procedures were there we were commanded to do the</p> <p>6 procedure of the day, we were not to put them off to the</p> <p>7 next day. That was a universal agreement between the</p> <p>8 three of us, Randon, myself and Lynn.</p> <p>9 Q. And did that to some degree make it more</p> <p>10 difficult for the Toshiba servicemen to service the</p> <p>11 equipment?</p> <p>12 A. Yes, it did.</p> <p>13 Q. Were you able actually to get the scans done</p> <p>14 that you needed to get done? In other words, did you</p> <p>15 lose any revenue on the MR operation as a result of the</p>	Speculation. Vague.

16 issues you had with its operation?

17 MR. TATE: Objection, lack of personal
18 knowledge.

19 A. We never lost any revenue from the operation of
20 the equipment.

21 Q. Another thing I want to try to clear up a
22 little bit if I could from this morning's examination, we
23 talked a little bit about Mr. Steiff and the early
24 negotiations. Do you recall that discussion generally?

25 A. Yes, I do.

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1 Q. And I want to try to phrase this question as
2 clearly as I can so that you can understand it. Is
3 somebody coming in here? Are we good to go? My question
4 is this, Mr. King, would it be fair to say as you sit
5 here today that you would not honestly be able to
6 distinguish between representations Mr. Steiff might have
7 made about the equipment it was originally contemplated
8 that DeSoto wanted and the actual equipment that it was
9 able to buy in view of financial and other restraints?

10 MR. TATE: Objection to the form, vague and
11 ambiguous.

12 A. Yes, I would.

13 Q. Fair enough. Were you aware, Mr. King, when
14 DeSoto elected to acquire the Excellart MR that this was
15 a new product for Toshiba?

16 A. Yes, we were.

17 Q. Did you from your knowledge in the field expect
18 that a new product involving this kind of complicated MR
19 technology would be likely to have bugs that would have
20 to be worked out as it was brought into operation in the
21 field?

22 A. Yes, I did.

23 Q. And did you expect that equipment such as the
24 Excellart, that is new, complex MR technology, would be
25 likely to have more such problems early on than an

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1 established piece of equipment would have?

2 MR. TATE: Object to the form.

3 A. I was aware that it should have some problems.
4 The amount of problems that should exist should be
5 somewhere around seven, eight, ten percent range of
6 problems. I think we experienced maybe twelve percent of
7 those problems. Newer technology like that, I had

8 cautioned against getting the first two or three, but we
 9 didn't want to go back to the older Toshiba systems. The
 10 platform was a very difficult one to operate for
 11 nonfluent technologists.

12 Q. Was that the Visart, by the way?

13 A. The Visart. So, we elected to go ahead and go
 14 with a chance to have a better piece of equipment.

15 Q. Recognizing that that might involve more bugs
 16 on the front end?

17 A. We were aware that it could possibly have those
 18 bugs.

19 Q. Fair enough. You left DeSoto in -- when was
 20 that, about June of 2002, am I correct?

21 A. June 10, 2002.

22 Q. You know the exact date?

23 A. Yes, I do.

24 Q. Okay. Since that time have you been involved
 25 with potential buyers of imaging equipment in order to

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1 offer your thoughts as to such equipment as might be
 2 appropriate for them to buy?

3 A. Yes, I have.

4 Q. In that context, have you ever recommended to
 5 anybody since you left DeSoto that they buy Toshiba
 6 equipment?

7 A. Yes, I did.

8 Q. What Toshiba equipment have you recommended to
 9 people that they buy and to whom have you made those
 10 recommendations?

11 A. I consulted with the building of another
 12 imaging center about seventy miles south of the Olive
 13 Branch lotion in Tupelo, Mississippi with a gentleman
 14 named Dr. Mike Curry (phonetic). He had asked me to
 15 evaluate equipment. Our two evaluating pieces of
 16 equipment were Philips and Toshiba. Looking at the
 17 specs, looking at the fixes on the equipment out there,
 18 understanding we had problems looking at the revisionment
 19 of those problems, knowing that they had researched the
 20 arena for magnets, we did go ahead and elect to choose
 21 from one of those two vendors.

22 Pricing meant a lot to us at that point,
 23 performance meant a lot, and having an actual field
 24 service engineer in the general area meant a lot, as it
 25 does with all sophisticated equipment like this. It was

	<p style="text-align: center;">99</p> <p>1 my recommendation to him at that point to buy Toshiba 2 products. I bought an MR, a CT, a nuclear bed camera, 3 and an ultrasound piece of equipment, new Toshiba.</p>	
100 – 101	<p style="text-align: center;">100</p> <p>4 Q. Okay. I am done with that book. You were 5 asked some questions in your previous session, Mr. King, 6 about some documents you had written and conversations 7 you had had also with some other Toshiba customers around 8 the November of 2001 period. Do you remember that? 9 A. I do. 10 Q. Now, at the point you had those conversations 11 with Toshiba customers, is it not true that Dr. Carvel 12 had made the decision that she wanted to remove the 13 Toshiba equipment? 14 A. It was. 15 Q. Is it not also true that one of the purposes 16 for which you were asked or instructed to have those 17 discussions was to try and support that decision for Dr. 18 Carvel? 19 MR. TATE: Object to the form. 20 A. It was. 21 Q. And is it also not true that at the time that 22 you were writing the documents in or about November 23 referring to issues or problems with the equipment that 24 the same thing is true, which was that you were 25 attempting to support Dr. Carvel in her decision to</p> <p style="text-align: center;">101</p> <p>1 remove Toshiba equipment? 2 MR. TATE: Object to the form, 3 mischaracterization of the witness' previous testimony. 4 A. Documentation of problems is the manager's 5 responsibility regardless of if he foresees a removal of 6 equipment, so I would say the documentation that we did 7 at that point was a little more exaggerated than normal, 8 but the documentation nevertheless occurred pre- and 9 post- with all equipment. 10 Q. When you say it was a little more exaggerated, 11 is it fair to say that that was because of the fact that 12 you were attempting to establish the position that Dr. 13 Carvel wanted to establish? 14 MR. TATE: Objection, vague and ambiguous, 15 object to the form, assuming facts not in evidence. 16 A. Yes, it was.</p>	<p>Vague. Form. Hearsay. Calls for an expert witness. The witness is not competent to opine. Speculation. Lack of personal knowledge.</p>
104 – 106	<p style="text-align: center;">104</p>	

8 Q. Now, is it fair to say that Olive Branch has a
9 pretty poor electrical power supply?

10 A. It's what we have been told.

11 Q. It's what DeSoto has been told?

12 A. Yes.

13 Q. By?

14 A. The power company. The growth has seamed out
15 on them.

16 Q. Now, is it also true -- and I'm not going to
17 ask you to look through documents, I'm just going to ask
18 you if you can testify to this from your personal
19 recollection one way or another. Is it also true that
20 certain kinds of problems with equipment tended to
21 congregate around peak hours of power usage?

22 MR. TATE: Objection, vague and ambiguous as to
23 what we're talking about.

24 A. When we started looking at the problems we were
25 having, we noticed that we started having a lot of these

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1 problems, not all of them but a lot of them, around the
2 three to four to five o'clock time frame. It was
3 explained to us from the power company that that was the
4 time people got home in the evening, they start cranking
5 up their TV's, their air-conditioners, their heaters,
6 whatever else the case may have been at that time of the
7 year. And so the power usage went up, which gave us a
8 fluctuation, if you will.

9 Q. Fair enough. There was some testimony, I think
10 at some point in your deposition, or it may have been in
11 someone else's, but I think it was in yours, about a hole
12 that was discovered in the shielding for the MR room, and
13 this was discovered in conjunction, I believe, either
14 with the removal of the Toshiba magnet or the
15 installation of the replacement magnet. Do you have any
16 knowledge of that event?

17 A. I have knowledge of the hole. I didn't report
18 the hole. I think Lindgren, our RF shield manufacturer,
19 reported the hole, when they came down and refitted the
20 room with new RF or new magnet.

21 Q. Who was responsible for installing the
22 shielding when the DeSoto facility was constructed, if
23 you know?

24 MR. TATE: Objection, lack of personal
25 knowledge, vague and ambiguous, object to the form as

	<p style="text-align: center;">106</p> <p>1 well as far as "responsible." 2 A. Lindgren RF Shielding was the contracting 3 company to provide the shielding and they installed the 4 room. 5 Q. Okay. Am I correct that the MR, the Toshiba 6 MR, had to be brought into the MR room through a hole in 7 the building created for that purpose? 8 A. All MR's are brought in through an entry point. 9 Q. Was the Toshiba MR brought in, as you 10 understand it, through the end of the MR room which had a 11 window in it? 12 A. It was. 13 Q. Am I correct that that is the opposite end of 14 the room from which the hole in the shielding was 15 discovered? 16 A. That is correct.</p>	
110 – 112	<p style="text-align: center;">110</p> <p>11 Q. Mr. King, during the first couple of days of 12 your depositions, and I can't remember which day, would I 13 be correct, on one of those days you had lunch at a local 14 Subway? 15 A. Yes. 16 Q. Would I be wrong in thinking that Dr. Carvel 17 approached you during that lunch? 18 A. She did. 19 Q. She did approach you during that lunch? 20 A. Yes, she did. 21 Q. Did Mr. Tate approach you, too? 22 A. Kyle and his friend sat at another table. 23 Q. That was I think -- was that Mr. Rhea 24 (phonetic) or whatever his name was? 25 A. Don't know.</p> <p style="text-align: center;">111</p> <p>1 MR. TATE: I'll object as far as being vague and 2 ambiguous as far as approach, whatever that means. 3 BY MR. CHESNEY: 4 Q. Did Dr. Carvel come and talk to you? 5 A. She sat with me at the table and talked with 6 me. 7 Q. What did she talk to you about? 8 A. Just about the problems that she had had, and 9 asked me would I come back, and I made the comment, you 10 couldn't pay me the money you owed me then. She made the 11 comment back that we didn't have the money then, but</p>	<p>Relevance under FRE 401, 402, & 403. Hearsay. Leading.</p>

	<p>12 we've got it now and we can pay you.</p> <p>13 My understanding of the whole process, they owed</p> <p>14 me quite a bit of money, and I walked out of there with</p> <p>15 zero. It was my own regard to walk out of there with</p> <p>16 zero, because I just had had my fill.</p> <p>17 Q. Focusing on this conversation at lunch, when</p> <p>18 you say she asked you if you would come back, you mean to</p> <p>19 work at DeSoto?</p> <p>20 A. Yes.</p> <p>21 Q. Was it your understanding that she was offering</p> <p>22 something in addition to a salary if you were willing to</p> <p>23 come back?</p> <p>24 MR. TATE: Objection, vague and ambiguous.</p> <p>25 A. Well, the comment she had made to me was that</p> <p style="text-align: center;">112</p> <p>1 she could offer me quite a bit of money. She mentioned a</p> <p>2 million dollars at that point over a period of years.</p> <p>3 That is when I made the statement, you couldn't even pay</p> <p>4 me the little money that you owed me and --</p> <p>5 Q. Okay. Did she have any other conversation with</p> <p>6 you during that lunchtime about the topic of your coming</p> <p>7 back or --</p> <p>8 A. No, that was pretty much basically it. I was</p> <p>9 just a listener at that point.</p> <p>10 MR. TATE: I'm sorry. You were what?</p> <p>11 THE WITNESS: A listener.</p>	
113 – 121	<p style="text-align: center;">113</p> <p>10 Q. First of all, what does patient habitus just</p> <p>11 mean as a general proposition in the context of imaging?</p> <p>12 A. Patient habitus is the size of the patient, the</p> <p>13 height, the description, the general makeup of that</p> <p>14 patient, whether they are large or small or very obese or</p> <p>15 very frail.</p> <p>16 Q. Is it your understanding that different people</p> <p>17 have different body densities?</p> <p>18 A. That is correct.</p> <p>19 Q. Is body density part of what you would talk</p> <p>20 about as patient habitus, or is that something different</p> <p>21 in your view?</p> <p>22 A. Yeah, that is the same thing.</p> <p>23 Q. It would be part of patient habitus?</p> <p>24 A. Yep.</p> <p>25 Q. Does patient habitus have the ability to affect</p> <p style="text-align: center;">114</p>	<p>Calls for an expert witness. The witness is not competent to opine. Relevance under FRE 401, 402, & 403. Vague. Speculation.</p>

1 in any way the ease with which you can acquire certain
2 types of images?
3 A. Yes, it does.
4 Q. How does it affect that, if you could give us
5 just a general quick overview?
6 A. Depends on what you are talking about
7 primarily, but in general, for x-ray you have to use more
8 penetrating factor. For MR, it's a little more difficult
9 with MR. The physics of MR requires you to scan longer
10 to excite more tissue, because there is more fat tissue
11 and fat excites out at a higher level of TR and TE, which
12 is the term for like your technique, you have to, like I
13 said, spend a little more time with that.
14 CT is the same way with more radiation on a
15 larger patient, less radiation on the smaller patient.
16 Some patients are so big that you are never going to get
17 a good image on them. This is affected across all
18 imaging modalities.
19 Q. Okay. Let me just follow up briefly on that in
20 a little more detail. You say there are some patients
21 who are so big that you can't really get a good image on
22 them. Is that something that is true across modalities?
23 MR. TATE: Objection, calls for expert opinion.
24 A. That is correct.
25 Q. When you say that, do you base that on your

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1 many years as a radiographer and as an MR registered
2 technologist?
3 A. I do.
4 Q. Is body size in and of itself a factor that
5 affects your ability to get good quality images, or is it
6 related to the nature of the tissue as well?
7 MR. TATE: Objection, vague and ambiguous,
8 calling for expert witness as to what situation.
9 MR. CHESNEY: That's fine. I withdraw the
10 question. Start again.
11 BY MR. CHESNEY:
12 Q. To your understanding, based on your years of
13 experience as a radiographer and an MR registered
14 technologist, does body size in and of itself affect the
15 ease with which you can capture images from a patient?
16 MR. TATE: Objection, calls for an improper
17 opinion.
18 A. Yes, it does.
19 Q. Does the density of a patient's tissue also

20 affect that?

21 A. Yes, it does.

22 Q. You had said, I think, that fat excites at a
23 higher level of TR and TE than other types of tissue, is
24 that -- did I understand you correctly?

25 MR. TATE: Objection, mischaracterizes the

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1 witness' previous testimony, vague and ambiguous. Well,
2 he'll tell me.

3 MR. CHESNEY: I'm just asking if I understood
4 him correctly.

5 THE WITNESS: That's correct.

6 BY MR. CHESNEY:

7 Q. When you say it excites the higher level of TR
8 and TE, would it be fair to say in layman's terms what
9 that means is it takes more power to excite fat than it
10 does to excite other tissue, or if that is not -- let me
11 ask you a different question, because that is trying to
12 have you inform us with your knowledge on the basis of my
13 ignorance, so that is not a good way to do it.

14 Let me ask you instead, if you could, as best
15 you can, describe in laymen's terms what it means when
16 you say that fat excites at a higher level of TE or TR
17 than other tissue?

18 MR. TATE: Objection, vague and ambiguous as far
19 as the meaning of laymen's terms.

20 A. An MRI scanner is a big microwave, and we're
21 not exciting all the atoms in the body, we're exciting
22 only the hydrogen atoms and they pulse at a certain radio
23 frequency. But as like with a microwave, when you put a
24 piece of bacon in a microwave, you're going to cook your
25 meat faster than you'll cook your fat, because it's so

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1 much looser and gelled, and it's just so much -- so many
2 more hydrogen atoms located in the fat.

3 They are looser in the fat than they are in the
4 denser muscle type tissue. An MR is the same way. We're
5 exciting the fat, and to get the fat excited and to get
6 through the fat to the more dense tissue, you've got to
7 increase, actually ask for longer times of scan.

8 Q. Fair enough. Now, if I understand at least in
9 a general sense, for example, what MR technology
10 involves, it involves what is called precessing hydrogen
11 atoms; is that a correct term?

12 MR. TATE: Objection, vague and ambiguous, lack
13 of foundation.

14 A. Precessing hydrogen atoms, your hydrogen atoms
15 are precessing right now, so that is not necessarily MR.
16 The MR actually aligns them in a north and south
17 direction, then we pulse our RF energy into that magnet
18 and relax that atom out of its alignment state, relax it,
19 let it precess back up to a 360 degree rotation, if you
20 will. We collect that energy as it's reviving itself and
21 getting back up into a vertical plane, if you want to
22 think vertical or horizontal, but it's not really
23 vertical or horizontal.

24 Q. But then to use what would be more appropriate
25 language, or language you would think would be more

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1 appropriate, if I understand it, the process of MR
2 involves exciting the hydrogen atoms in the body in such
3 a way to align them in a particular direction for
4 purposes of conducting a scan; is that correct?

5 MR. TATE: Objection, vague and ambiguous.

6 A. That is correct.

7 Q. Fair enough. If I understood your earlier
8 testimony, and correct me if I'm wrong, it is harder to
9 excite hydrogen atoms and have them align in the desired
10 manner in fat than it is in other tissue; is that a fair
11 general statement?

12 A. That is an incorrect statement.

13 Q. Okay.

14 A. It is harder to align them into a denser tissue
15 than it is the fat. Fat is loaded with hydrogen atoms,
16 and they are all loose like this. In dense tissue they
17 are all tight, they can't go anywhere, so, therefore,
18 they run against themselves. Like if you put twenty tops
19 on this table, spun them all, they would all run into
20 each other. But if you give them the whole table to
21 work, they could spin and spin and spin. But if you put
22 them in a little bowl, they are only going to spin so
23 long, run into each other and die off. So, the
24 excitation of that atom requires them to spin enough that
25 you get a signal back off of them. Fat will spin a long

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1 time.

2 So, is the -- why is it harder to acquire an
3 image from a larger, more obese patient than from a

4 smaller patient?

5 A. The amount of tissue between the fat and the
6 tissue will prevent you from getting to the more dense
7 tissue. Then you -- after exciting that, you only have
8 so much depth at a receive coil or a send coil, these are
9 coils that receive that energy that is being deposited by
10 that precessing atom, if you can't get that dense tissue
11 atom signal back out to that coil because you've got two
12 inches of fat there, then you have got to increase it to
13 the point it's gotten through that and spun on out to the
14 denser tissues.

15 Q. I think if I understood your testimony from
16 your previous sessions, DeSoto anticipated having, and
17 when it opened its operations actually did have, a
18 patient habitus that was larger than would be considered
19 average; is that fair to say?

20 A. That's correct.

21 Q. Was it considerably larger than would be
22 considered average?

23 MR. TATE: Objection, speculation.

24 A. We looked at our -- did our research on the
25 inhabitants of that community and the North Mississippi

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1 area, and we found them to probably be twenty percent
2 larger than in other areas of the surburban area,
3 Memphis, Arkansas, other places. That is real general in
4 population around us.

5 Q. Now, you gave some testimony in your previous
6 deposition about coils, and in particular about CTL
7 coils?

8 A. Yes.

9 Q. CTL, I take it, stands for cervical thoracic
10 lumbar, is that correct, in the coils?

11 A. That is correct.

12 Q. And I think there were a number of coils that
13 were involved with the DeSoto Excellart MR, CTL coils
14 that were replaced at various times; is that correct?

15 A. That is correct.

16 Q. Now, these coils, I think you said in your
17 previous testimony, were manufactured by -- was it
18 Scientific American or American Scientific?

19 A. American Scientific, yeah.

20 Q. Scientific American is a magazine, I guess,
21 right? American Scientific?

22 A. That's correct.

	<p>23 Q. There was some testimony to the general effect 24 as I recall it that these are coils made for use in the 25 industry, I think you said something like everybody uses</p> <p style="text-align: center;">121</p> <p>1 them, again, I'm just saying that to orient you -- 2 MR. TATE: I will object to the form. 3 BY MR. CHESNEY: 4 Q. My actual question is this: Is it your 5 understanding the American Scientific CTL coils used in 6 the Excellart MR are also coils used by other 7 manufacturers of MR equipment? 8 MR. TATE: Objection, lack of personal 9 knowledge, lack of foundation. 10 A. The two places I can tell you from personal 11 knowledge is Toshiba uses them and GE uses them.</p>	
128 – 131	<p style="text-align: center;">128</p> <p>13 keep him happy. First question is this: When you were 14 at DeSoto did DeSoto have any staff other than its 15 technologists, Dr. Carvel, Mr. Carvel, who worked there 16 at any time? 17 A. Yes, they did. 18 Q. Did it have any additional people who were 19 there generally speaking the whole time you were there, 20 any other classes of employees? 21 MR. TATE: Objection, vague and ambiguous. 22 A. Yes, they did. 23 Q. Can you describe for me what other types of 24 employees were there? I assume there was some clerical 25 staff?</p> <p style="text-align: center;">129</p> <p>1 A. Yes, there was. 2 Q. Typists and things like that. I'm not thinking 3 about that so much. I am more interested in terms of 4 people who may have been there providing services in the 5 IS area or in the billing area? 6 MR. TATE: I object to the form, vague and 7 ambiguous, meaning of IS. 8 BY MR. CHESNEY: 9 Q. Do you understand what IS means, information 10 systems? I'm sorry. 11 A. I'm the information systems guy. We had a 12 contract person that came in and helped us with the IT 13 portion, but as a general rule, I took care of all the IT 14 stuff, information technology things. Billing-wise, we</p>	<p>Relevance under FRE 401, 402, & 403. Misleading. FRE 106 competence.</p>

	<p>15 had a billing manager and anywhere from one to two 16 billing clerks at any given time. 17 Q. Who was DeSoto's first billing manager? 18 A. Rhonda Tschume, T-S-C-H-U-M-E. 19 Q. Did there come a point when Ms. Tschume left 20 DeSoto to your knowledge? 21 A. Yes, it did. 22 Q. When she left, did someone else replace her in 23 the position of billing manager? 24 A. Yes, they did. 25 Q. Who was that, if you know?</p> <p style="text-align: center;">130</p> <p>1 A. I can't recall her name. She only stayed about 2 three months. 3 Q. Do you have any understanding as to why she 4 left? 5 MR. TATE: Objection, calls for speculation. 6 A. I don't really have a great understanding of 7 that, other than the fact she felt like it was in a mess. 8 Q. When you say she felt like it was in a mess, 9 can you tell us anything about your understanding as to 10 why she thought it was in a mess? In what way did she 11 think it was in a mess? 12 MR. TATE: Objection, lack of personal 13 knowledge, speculation. 14 A. No, I can't. 15 Q. Do you have any understanding as to why Ms. 16 Tschume left? 17 MR. TATE: Same objections. 18 A. Ms. Tschume and I started in the practice 19 together. She was the first employee of DeSoto 20 Diagnostic Imaging and I was the second one, even though 21 I had done some consulting work, and we brought her in on 22 our billing practice to begin with. Her technique of 23 doing accounts receivable, billing out, preparing the 24 Medicare, Blue Cross, all the insurance forms, was not 25 adequate enough to satisfy Lynn or Randon or myself.</p> <p style="text-align: center;">131</p> <p>1 Q. So, she was let go, Ms. Tschume? 2 A. She wasn't let go. She actually resigned on 3 her own, she just didn't show up for work one day. But I 4 think that the writing on the wall, she read it pretty 5 clearly.</p>	
134 – 136	134	Relevance under FRE

22 Q. When you say that the RIS system could generate
 23 statistical reports, what kind of statistical reports do
 24 you understand it could generate?

25 A. A number of each modality imaging -- each

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1 modality imaged certain parts of the body, brain, C
 2 spine, thoracic spine, lumbar spine. It could break that
 3 down to type of body part. It could break it down to the
 4 referring physician, could break it down for the
 5 technologist who performed the exam. It could break it
 6 down to the interpreter if we had more than one
 7 radiologist, which at some times we did. It could break
 8 it down to the demographic area if we wanted to focus on
 9 a particular area.

10 Q. Could it or did it break it down by modality?

11 A. Yes, it did.

12 Q. So, would you be able to generate from the RIS
 13 system information as to the quantity of examinations
 14 that were performed within given periods of time on each
 15 of the modalities in DeSoto?

16 A. It would do it daily, weekly, monthly, yearly.

17 Q. How do you know that?

18 A. Because I had to run those statistical reports.

19 Q. And did you run them?

20 A. I did.

21 Q. Were hard copies kept of those reports?

22 A. Probably not. We generated hard copies, but as
 23 far as keeping them, they were already in the system for
 24 archiving.

25 Q. So, they were maintained in an electronic form;

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1 is that correct?

2 A. That's correct.

3 Q. Did any of these reports reflect the revenue
 4 that was generated from the studies?

5 A. We didn't obtain the financial portion of that.

6 Q. But you were able to identify the number of
 7 studies and the kind of studies that were performed?

8 A. That's correct.

9 Q. With regard to each modality?

10 A. That's correct.

11 Q. As far as you know, is that RIS system still at
 12 DeSoto?

13 A. I have no earthly idea.

401, 402, & 403.

	<p>14 MR. CHESNEY: What is the time?</p> <p>15 MR. TATE: Time to turn him over, because we're</p> <p>16 running out of time.</p>	
152 – 157	<p style="text-align: center;">152</p> <p>4 Q. While you were at DeSoto, were you in charge of</p> <p>5 the billing department?</p> <p>6 A. I was in charge of all the employees.</p> <p>7 Q. But as far as in particular the billing</p> <p>8 department, were you in charge of that, or what was your</p> <p>9 role, if you can describe it?</p> <p>10 A. I was pretty much the overseer.</p> <p>11 Q. Okay. But as far as preparing claim forms and</p> <p>12 sending such forms out to insurance companies, that sort</p> <p>13 of thing, you weren't actually hands on with that</p> <p>14 process, were you?</p> <p>15 A. No, I was not.</p> <p>16 Q. Okay. So, you weren't hands on. Is it fair to</p> <p>17 say you weren't hands on with coding charges onto these</p> <p>18 claims forms to be sent to insurance companies; is that</p> <p>19 fair to say?</p> <p>20 A. No, it's not. I involved myself just from the</p> <p>21 outside looking in enough to know what was going on. So,</p> <p>22 if the employee failed to do their job and I could</p> <p>23 identify that failure. But as far as doing that, could I</p> <p>24 sit down and do it? No. Did I know the codes? Yes.</p> <p>25 Q. What was the code for the 3-D reconstruction</p> <p style="text-align: center;">153</p> <p>1 you were talking about earlier?</p> <p>2 A. 76375.</p> <p>3 Q. What number is it?</p> <p>4 A. 76375.</p> <p>5 Q. And what is the definition of that code, if</p> <p>6 that is the proper one?</p> <p>7 A. 3-D MPRs, 3-D reconstruction, CT MR recon.</p> <p>8 Q. What does that mean?</p> <p>9 A. What does it mean?</p> <p>10 Q. Yeah.</p> <p>11 A. It means pulling the image data into a slab of</p> <p>12 information that you can cut and dice in multiple planes</p> <p>13 front to back, top to bottom, left to right, oblique</p> <p>14 angles, any which angle you may be wanting to manipulate</p> <p>15 that.</p> <p>16 Q. If that is the right code for 3-D</p> <p>17 reconstruction, what does that code include, what exams?</p> <p>18 A. It says CT MR on that. CT is certainly the</p>	

19 usage factor that you would probably maintain if you did
 20 them. MR, the only thing that you did 3-D on was
 21 angiography. MRA's, you did put those in a 3-D format,
 22 nothing else did you put in a 3-D format. You didn't
 23 need to look at slab data.
 24 Q. Where did you get this information on, this
 25 coding number?

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1 A. Medicare, CPT coding, radiology coding books.
 2 Q. What year?
 3 A. 2004 -- 2003, 2002, 2001, 2000, they were
 4 opened up in 1999 for payment.
 5 Q. So, am I hearing you testify earlier that there
 6 was something wrong with billing for a 3-D
 7 reconstruction?
 8 A. Yes, it is.
 9 Q. And what is your testimony regarding that?
 10 MR. CHESNEY: Excuse me one second. As phrased,
 11 that question actually mischaracterizes the witness'
 12 previous testimony, and, therefore, I object to it.
 13 MR. TATE: I'm trying to make sure the record is
 14 clear.
 15 MR. CHESNEY: Overbroad, vage and ambiguous, and
 16 mischaracterizes the witness' previous testimony.
 17 BY MR. TATE:
 18 Q. Okay. Again, I think you understand my
 19 question. What did you perceive as being wrong with
 20 billing for the 3-D reconstruction and using that code at
 21 DeSoto, I guess the 76735 that you have stated?
 22 A. 375.
 23 Q. Yeah.
 24 A. The problem with billing that code is that
 25 there is two problems with it. You had to actually do

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1 it, that is number one, and we did not.
 2 Q. You had to do what?
 3 A. Didn't do the 3-D reconstruction on MRI. None
 4 of that was ever done except for MRA's. MRA's, we did,
 5 but we billed every exam with the 3-D MPR -- MR. The
 6 second one is you have to, and this goes for CT and MRI,
 7 you have to have a referring physician's actual order
 8 stating that he needed 3-D MPR pulled on that, and at
 9 that point you can bill because you have an actual order
 10 for that. The radiologist could not manifest an order

11 for that unless she saw a particular pathology she needed
12 to see.

13 Pathology means a cancer, a tumor, some kind of
14 abnormalities that may have occurred. In order for her
15 to have seen that or he to have seen that is that they
16 would actually have to see the first images that came out
17 and then call the physician up that referred, ask for an
18 actual order, receive it in writing, and document that.

19 Q. Now, you are saying you reviewed these Medicare
20 CPT code manuals while you were at DeSoto?

21 A. I was very familiar with them when I was at
22 Magnolia Hospital from '95 till '97, Delta Medical Center
23 from '97 to '99, and then again as they came up in code
24 form after that. Here just recently I have been put on
25 the charge master team for our hospital. Within the last

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1 year, we have been in constant review of all these. It's
2 a constant, ever-changing process.

3 Q. So, is that how you learned the specific number
4 for the 3-D reconstruction here in the last year with you
5 being in your new position?

6 A. Absolutely.

7 Q. So, at the time you were at DeSoto, you didn't
8 actually know that particular code number?

9 A. Yes, I did.

10 Q. You did?

11 A. Yes, I did.

12 Q. Based on what?

13 A. Based on the billing code. When I'd go to
14 Jennifer Sneed and ask, and to Sue Barger, who was
15 ya'll's coder as well, and ask what number are we billing
16 this at, and those numbers were given out then. The
17 numbers have a tendency to change over the years, J codes
18 and things like that would be added to them for
19 additional media you may use, but the codes generally
20 stay somewhere in that range. So, if it's 76375 this
21 year, it may stay 375. It may change to 376 depending on
22 the interpretation of that billing agency.

23 Q. It's your understanding that this 76735 --

24 A. 375.

25 Q. What is it?

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1 MR. CHESNEY: 76375.

2 BY MR. TATE:

	<p>3 Q. Came into existence around 1999?</p> <p>4 A. I think in 1999 Medicare approved it for</p> <p>5 payment.</p> <p>6 Q. That specific code?</p> <p>7 A. That specific code. I'm not sure about the</p> <p>8 date. That is just my understanding of when it generally</p> <p>9 came on line.</p> <p>10 Q. What about in the year 2000?</p> <p>11 A. It was on line then.</p> <p>12 Q. You are certain of that?</p> <p>13 A. Positive.</p> <p>14 Q. What about 2001?</p> <p>15 A. Positive.</p> <p>16 Q. What about 2002?</p> <p>17 A. Positive.</p> <p>18 Q. What about 2003?</p> <p>19 A. Positive.</p>	
158	<p>158</p> <p>1 Q. So, it's your testimony you were aware of the</p> <p>2 76375 code for the 3-D reconstruction while at you were</p> <p>3 at DeSoto, correct?</p> <p>4 A. I was aware of the number and the acquisition</p> <p>5 of that data and what it represented, yes.</p> <p>6 Q. But as far as actually sitting in the billing</p> <p>7 office and putting it down to paper or sending claims</p> <p>8 out, you didn't do that?</p> <p>9 A. I never did that. That was Lynn doing that.</p> <p>10 Q. Okay. Along with the billing manager?</p> <p>11 A. No. Lynn coded all her own stuff.</p> <p>12 Q. I thought you testified earlier Sue Barger was</p> <p>13 a coder?</p> <p>14 A. Sue Barger was a coder after hours. Lynn, if</p> <p>15 she had it in front of her, she coded it.</p> <p>16 Q. Dr. Carvel and Sue Barger were doing the coding</p> <p>17 at DeSoto while you were there?</p> <p>18 A. I would say the primary coder was Lynn. That</p> <p>19 was a smart thing on her part. She was a coder. She was</p> <p>20 a radiologist. She was our golden goose.</p> <p>21 Q. Well, I guess my question is, if Dr. Carvel was</p> <p>22 the primary coder, Sue Barger also provided coding at</p> <p>23 DeSoto, correct?</p> <p>24 A. That is correct.</p>	FRE 106 competence.
173 – 174	<p>173</p> <p>18 Q. I'm not talking about -- just for clarity to</p> <p>19 make sure -- Mr. Steiff or anybody, I'm talking about</p> <p>20 your understanding of the representations you just talked</p>	

	<p>21 about a while ago. That's what I'm looking for, your 22 understandings. 23 A. I think the first proposal we had we asked for 24 hearts and we were given those numbers. Second proposal, 25 our eagerness to get into the operation and our short</p> <p style="text-align: center;">174</p> <p>1 time frame to get in the operation probably forced us to 2 overlook some of that, and it wasn't intentional. It was 3 just -- in our minds, it proved to be a little 4 misrepresented, but indeed we did check off on it. We 5 did know what we were getting. We got a dual head. He 6 had already told us dual head. We had already seen it. 7 We talked to the techs but without the salespeople 8 available when we went to Pensacola. 9 So, we knew our dual head would be a little 10 longer. They didn't do hearts on them. But they could 11 do hearts, and it wasn't going to be a problem. So, when 12 you see dual heads, you just automatically assume it's 13 going to do it, and those were our assumptions.</p>	
214 - 216	<p style="text-align: center;">214</p> <p>20 BY MR. CHESNEY: 21 Q. With regard to Ms. Kroncke -- is that the right 22 pronunciation? She came in to see you on what would have 23 been her second day at DeSoto; is that right? 24 A. She came in, never reported to work, never 25 clocked in, just went ahead and told me she had to</p> <p style="text-align: center;">215</p> <p>1 resign. 2 MR. TATE: Objection, hearsay. 3 BY MR. CHESNEY: 4 Q. She actually had just left a job to come to 5 work at DeSoto the day before; is that correct? 6 A. That's correct. 7 Q. And she had left her previous employment in 8 order to do that; is that correct? 9 A. That's correct. 10 Q. She came and worked for one day at DeSoto? 11 A. That's correct. 12 Q. Then the next morning she came in and saw you 13 before she went to work; is that right? 14 A. That's correct. 15 Q. And was she upset about the situation? 16 MR. TATE: Objection, assuming facts not in 17 evidence.</p>	Relevance under FRE 401, 402, & 403.

18 THE WITNESS: That was more than two questions.
 19 BY MR. CHESNEY:
 20 Q. But they're all going to be done in less time
 21 than two questions. Was she upset about the situation?
 22 A. Yes, she was.
 23 MR. TATE: Again, objection, mischaracterizes
 24 the witness' previous testimony, assuming facts not in
 25 evidence. Unless you want to give me a continuing

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1 objection to all objections regarding this --
 2 MR. CHESNEY: You can have all the objections
 3 you want to this.
 4 MR. TATE: Okay, go ahead.
 5 MR. CHESNEY: You can make any objection you
 6 want.
 7 MR. TATE: I'm just talking about it's
 8 continuing.
 9 MR. CHESNEY: Understood. No problem.
 10 BY MR. CHESNEY:
 11 Q. She was upset. Did she appear upset?
 12 A. Yes, she did appear upset.
 13 Q. Was she somewhat emotional about the situation?
 14 A. Yes, she was.
 15 Q. In that condition, did she then tell you that
 16 she was leaving because of what you previously testified
 17 to, her feeling uncomfortable with what she had been
 18 asked to do the day before?
 19 A. Yes, she did.
 20 MR. CHESNEY: Thank you. That's all.
 21 THE VIDEOGRAPHER: This concludes the videotaped
 22 deposition of Mr. Paul King, consisting of four tapes.
 23 The original tapes of today's testimony will remain in
 24 the custody of Alpha Legal Productions, whose address is
 25 100 North Main, The Lobby, Memphis, Tennessee 38103. We